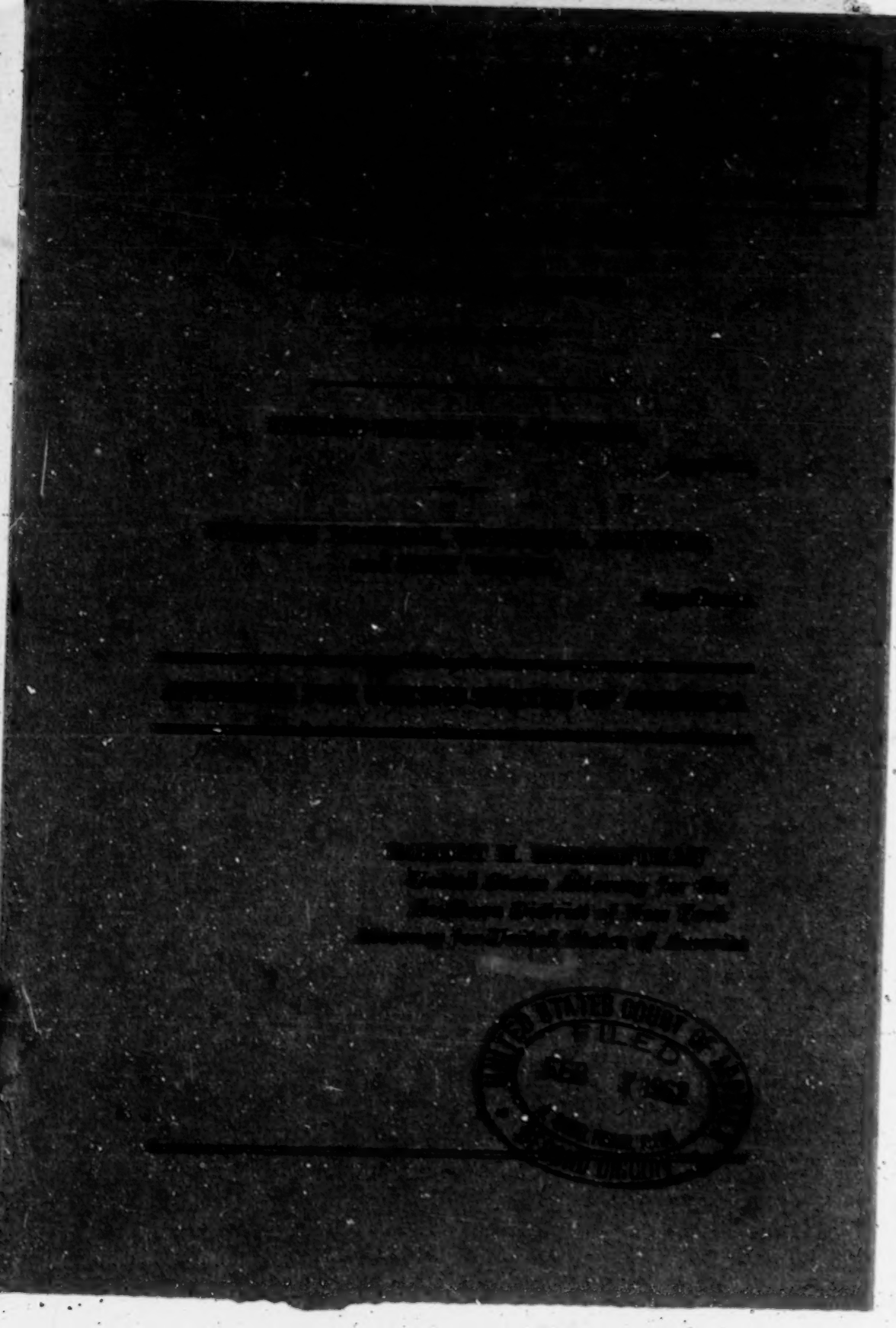

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## Excerpts from Testimony

(1)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 Cr. 206

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UNITED STATES OF AMERICA

vs.

WINSTON MASSIAH, JESSE COLSON, MITCHELL ANFIELD, GRANVILLE SMITH, NOEL MAXWELL, WILLIAM ADAMS, JOHN HENRY PURRY, CLARENCE WHITE, NICK HOLIDAY, ICKY THORN, SYLVIA FERRIS, JOHN DOE, also known as "LEON", meaning thereby to describe a Negro male of medium complexion, with black hair and a medium build, approximately 40 years old, approximately 5' 9" tall, and weighing approximately 165 lbs.,

Defendants.

---

Before: HON. J. SKELLY WRIGHT, D. J.,
and a Jury.

New York, June 15, 1961,
10:30 o'clock a.m.

APPEARANCES:

ROBERT M. MORGENTHAU, Esq.,
United States Attorney,
for the Government;

By James G. Starkey, Esq.,
Assistant United States Attorney.

*Appearances*

ROBERT J. CARLUCCIO, Esq.,
Attorney for Defendant Massiah.

(2)

EUGENE K. JONES, Esq.,
Attorney for Defendant Colson.

I. EDWARD POGODA, Esq.,
Attorney for Defendant Anfield.

JESSE ZASLAV, Esq.,
Attorney for Defendants Maxwell, Adams and Purry.

ABRAHAM SOLOMON, Esq.,
Attorney for Defendant White.

NORMAN ARCHER, Esq.,
Attorney for Defendant Thorn.

EARL MCHUGH, Esq.,
Attorney for Defendant Ferris.

MORRIS SOMERS, Esq.,
Attorney for Defendant Aiken.

* * * *

(38)

ELITA LLOYD, called as a witness in behalf of the government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. Will you kindly speak as loudly as you can, Miss Lloyd, so that the jury and the Court can hear you. A. Yes.

Q. Do you know a man by the name of Winston Massiah, Miss Lloyd? A. I do.

Q. Do you see him in the courtroom? A. Yes.

Q. Will you point him out, please. A. (Witness points.)

The Court: Well, suppose you tell us. Now there is a table, a second table, and the chairs against the little rail there. Now tell us where he is.

The Witness: Right there.

The Court: Will the record show that she identified the defendant.

Q. When did you first meet Winston Massiah, Miss Lloyd? A. 1950, in May.

Q. Where did you meet him? A. At my sister's house, at 30 East 128th Street.

(39)

Q. And who introduced you to him? A. A friend of my sister's.

Q. Were you living there at the time? A. Yes, I was.

Q. How long did you continue to live there? A. I lived there until July 1st of the same year.

Q. Where did you move to then? A. To 19 East 128th Street.

Q. Do you know where Massiah lived at that time? A. Well, he was still living with my sister at 30 East 128th Street.

Q. And he was living there as a roomer? A. Yes, he was.

Q. Did there come a time when he moved from there, if you know? A. Yes, there did.

Q. When was that? A. About September of 1950.

Q. Do you know where he moved to? A. He came over to live with me at 19 East 128th Street.

Q. Was there a financial arrangement at that time? A. Yes, there was.

Q. What did you give him and what did he pay? (40) A. Well, he paid $6 for the room.

Q. One room? A. Yes.

Q. How often did he use it thereafter? A. About, I think, every thirty-some days he would be in for about three or four days, five days at the most.

Q. Did he ever tell you where he was during that 30-day period, or 30-odd-day period? A. At sea.

Mr. Carluccio: Objection. It would be hearsay, where he was.

The Court: That is overruled. The question was what the defendant had told her. Overruled.

Where did he say he was?

The Witness: He was at sea. He was working on a ship.

Q. Now, when was it that he moved in? A. About September.

Q. How long did he continue to live there? A. He lived there until '56, around October some time.

Mr. Pogoda: If the Court please, I can't hear this witness.

(41)

The Court: All right, sir.

Would you keep your voice up loud so that counsel and the defendants can also hear you as well as the jury?

The Witness: Yes.

Q. Did there come a time, Miss Lloyd, when you met some friends of Massiah? A. Yes, there did.

Q. At the apartment? A. Yes.

Q. When did you begin meeting these friends? A. Around '56 in May or June.

The Court: Keep your voice up.

The Witness: About '56, May or June.

Q. Do you remember the names of any of them? A. Yes, I do.

Q. Whom did you meet in May or June? A. I met Maxie, Hawk, Jesse, I think——

Q. Do you now know what the full name of the man introduced to you as Maxie is? A. No, I don't know his full name.

Q. Do you recall the name Noel Maxwell?

Mr. Pogoda: I object. He is not one of the defendants on trial. He is not on trial now, and I submit (42) that it has no business in this case.

The Court: Well, I think counsel is trying to set up proof for his conspiracy which involve not only the ones on trial, but also the others who were named, so I will overrule the objection.

Mr. Carluccio: May I object on the ground that it is leading.

The Court: I will sustain that objection.

Don't lead the witness.

Q. Do you know what Hawk's name is? A. No, I don't know his name, Just Hawk.

Q. Do you know what Jesse's full name is? A. Yes, I do.

Q. What is his last name? A. Colson.

Q. And when did you meet Colson? A. I met Colson about June or July, I think it was.

Q. At your apartment? A. Yes, I did.

Q. Who introduced you to him? A. Winston did.

Q. Did you ever hear any conversations between Winston and Jesse Colson during this period? A. No, I did not.

(43)

Q. Now, did there come a time, Miss Lloyd, when you saw some men whom you did not recognize in the apartment? A. Yes, there did.

Q. When did that occur? A. That was about October of 1956.

Q. Would you tell the Court and jury exactly what happened on that day. A. One morning I was making breakfast and the doorbell rang. When I opened the door these two strange men were there to see Winston, so I called to him and he said to let them come in.

Q. Into his room? A. Yes. They came in. One of them went into his room and one sat in the living room. He asked for a cup of coffee and I gave him the coffee, and asked him did he want some toast, and he said yes, he would take some toast, so I went back to make some toast, and the bell rang again and another man came in.

I asked him did he want coffee and he said no. So I asked him would he have a drink, and he said yes, and I gave him a drink. I went back into the kitchen, and after a while they left.

So I went in, when I was through doing my work in the kitchen, I went inside, and Winston was very (44) upset.

So I asked him what happened.

Mr. Carluccio: Objection. I think it is not responsive. All he asked is what happened that day.

The Court: I think we are still on the same day, so I will overrule the objection.

Finish your story, please.

A. (Continuing) I asked him what had happened, and he said that they were not cops.

So I said, "Why cops?"

He got very upset and he was sick and he couldn't answer any more for a long time.

Q. Did he say they were or they were not cops? A. They were not.

Q. What else did he say then? A. He got sick, and we had to call the doctor for him. He was very upset.

Q. Did you have any further conversation with him? A. Later that evening I asked him what really happened, and he said that he had some money——

Mr. Pogoda: If the Court please, I object to any conversation not in the presence of the defendant (45) Anfield insofar as it relates to the defendant Anfield.

The Court: The Court will overrule the objection. I assume counsel is attempting to prove the conspiracy, and the acts and statements of any one of the conspirators in furtherance of this conspiracy are admissible as against all. However, it is a question for the jury as to whether or not these acts and these statements are in furtherance of any

conspiracy. Whether or not, first, of course, there will be a conspiracy proved which the jury will have to determine, and then whether or not these acts which are being testified to, if you believe that they happened as the witness says they happened, whether or not they were in furtherance of the conspiracy. But we will get into that as we go along, so let's proceed.

Mr. Starkey: Thank you, your Honor.

By Mr. Starkey:

Q. What were the further conversations that you had with Winston Massiah that day? A. He said he had some money to go away and they had followed him and taken the money away from him.

Q. Did he say where he got the money? A. At the bank.

Q. Was there any further conversation? (46) A. Not that day. I called him to call the police and tell them about it, and he said they had threatened him and he couldn't do it.

Q. Now, did there come a time thereafter when you again discussed the events of that day with Massiah? A. The following evening Jesse Colson came by and he brought some friends there——

Mr. Somers: I can't hear that, your Honor.

The Court: He said that the following evening Jesse Colson came by and brought some friends with him.

Q. Did you have any discussion with Massiah about a gun? A. Yes, your Honor.

Mr. Somers: I object to that.

Mr. Carluccio: That is leading. There is no testimony whatsoever about a gun.

The Court: That is overruled.

Did you or didn't you?

The Witness: Yes, I did. I asked him if there was supposed to be a gun. I asked him whether it was a real gun or a toy pistol, and he said he didn't know.

Q. A gun in the possession of the men who had been there?

Mr. Carluccio: Objection, your Honor. It (47) is leading.

The Court: Sustained. Don't lead.

Q. Was there anything else said about the gun? A. No.

Q. Now, you say Colson came thereafter? A. Yes, he came the following night and he brought some friends with him.

Q. Did you hear any conversation—how many people were there then? A. Two people.

Q. Two people with Colson? A. Yes.

Q. Did you hear any of the conversation then between them and Winston? A. I overheard something about some money and some stuff.

The Court: Speak up, please. Some money and some stuff? Is that what you said?

The Witness: Yes, your Honor.

The Court: Speak in a loud voice so that everybody can hear you.

Q. Did you hear any more conversation before they left? A. No, I didn't.

(48)

Q. Did there come a time after they did leave when you had another conversation with Massiah? A. I asked him what the stuff was about and he said him and Jesse was in something illegal.

Q. What did you say? A. I got angry then and fussed, I fussed at him and told him that he would have to move away from there.

Q. Was there any further conversation? A. Another night I think they came back——

The Court: Speak louder, please.

A. (Continuing) They came back the following night again and asked——

Q. What happened on that occasion? A. Winston wasn't there. He was visiting upstairs. And I went up to get him, and when we were part way down the steps Jesse came up and he was fussing and laughing at him for being afraid.

Q. Laughing at Massiah? A. Yes.

Q. Did you hear any more conversation on that occasion? A. No, I didn't.

Q. Do you know Mitchell Anfield? A. No, I don't know him.

(49)

Q. Duke? A. Yes, I know him.

Q. Did you ever have any conversation with Winston around this time concerning what he and Jesse had been doing? A. Yes. I asked him what it was.

Q. What did he say? A. Coke.

Q. When did this conversation occur? A. One of the nights before he moved away.

Q. What else was said at that time, or what was said beforehand? A. (No. response.)

Q. In connection with his answer? A. I don't understand the question.

Q. Before he said coke what did you say and what did he say? A. I asked him what it was they were dealing in, and when he said that, I told him then that it was very dangerous and we were all in a situation where we could either have gotten killed or gone to jail.

Q. Was there any further conversation about this? A. He said he was sorry and that he would move away.

(50)

Q. Now, when did you first meet the man you know as Duke? A. A few days after that happened, Jesse brought him by and introduced him to me and said he was his brother.

Q. Do you see Duke in the courtroom? A. Yes, I do.

Q. Will you point him out, please. A. Right there (pointing).

Q. What color clothes is he wearing? A. A pink shirt.

Q. A pink shirt? A. Yes.

Mr. Starkey: May the record show that the witness has identified the defendant Mitchell Anfield?

The Court: Yes.

Q. Was there any further conversation at that time when Jesse Colson introduced Duke to you? A. No. He

just said hello and asked how is everybody doing, and something like that, and then they left.

Q. Do you know a man by the name of James Barber —Jimmie Barber? A. Yes, I do.

(51)

Q. When did you meet him? A. A few days after that happened I met him once. He came to the house one time.

Q. A few days after the business with the strangers in the apartment? A. Yes.

Q. Did you hear any conversation between him and Massiah at that time? A. No, I didn't.

Q. Who introduced you to Barber? A. Well, we were not introduced.

Q. You just saw him? A. Yes.

Q. In whose presence? A. (No response.)

Q. Who was there? A. Winston was there.

Q. Did there come a time thereafter when he did move out, when Massiah did move? A. Yes, there did.

Q. Do you know where he moved to? A. He moved over to 8 East 128th Street.

Q. Did there come a time when he talked to you again about moving back in? A. Yes.

(52)

Q. When was that? A. About five or six months later.

Q. So that would be in the spring of '57? A. About that.

Q. What was the conversation you had with him at that time? A. I don't remember the exact conversation but he wasn't well. He wasn't feeling well, and I think he wasn't working, or something. I am not sure.

Q. Well, what did he say to you, as best you can recall? A. He said he wasn't working, and he wasn't feeling well, and he didn't want to be there alone because most of the time he was sick. He was supposed to have had a bad heart. And most of the time he would be sick, and he wouldn't have any money, and things like that.

Q. What else was said? A. And so I told him, all right, he could come on back.

Q. He asked you if he could come back? A. No.

Q. On that occasion? A. No, not exactly. We were just discussing his (53) illness and rough times, and all that, and I told him he could come on back over there because it was very hard for him alone where he was.

Q. Did you have any discussion about the past at this time? A. Yes. He said he never would do anything like that again.

Q. And then he did move back in? A. Yes, he did.

Q. Now, did you see any of his friends around the apartment thereafter? A. For a long time I didn't see anyone.

Q. How much time passed, would you say? A. Oh, it must have been a year, I think.

Q. And whom did you see then? A. Then I saw Maxie and Hawk, they came back about twice and visited him for a while.

Q. And that would be in the spring of '58 or the early part of 1959, about a year later?

Mr. Carluccio: Objection, your Honor. She should testify to the time.

The Court: I think she has already testified that it was about a year later.

In other words, you testified, as I understand it—

(54)

The Witness: I don't know exactly, but it was a very long time. It seemed about a year.

Q. Now, after Massiah returned and you saw Maxie and Hawk again, did there come a time when you saw Jesse? A. Yes.

Q. When did you see him again? A. Well, Jesse—he didn't stop coming. He used to come off and on and visit.

Q. When did you see him again after the incident with the men in the apartment, the strange men? A. I think the day after.

Q. Well, after Winston moved out did you see any more of Jesse before he moved back in? A. No.

Q. And he moved back in how long after he moved out? A. About five or six months.

Q. Five or six months after October of '56; is that right? A. Yes.

Q. Now, after he moved back in then in the early part of 1958, when did you next see Jesse? A. Well, soon after he moved back in, Jesse came. Jesse would visit him often.

(55)

Q. How often did he visit him thereafter? A. I can't say exactly how often, but he used to come by every so often.

Q. About how many times would you say you saw him before May of 1958? A. I can't say in numbers how many times.

Q. Now, did there come a time after you began seeing Maxie, Hawk and Jesse coming around to see Winston again when you received a letter from Winston? A. Yes, I did.

Q. When was that? A. That was just before he was arrested.

Q. On this charge? A. Yes.

Q. And do you remember when he was arrested for this charge on which he is now on trial? A. It was 1958, either May or June.

Q. And how long before this occurred did the letter come? A. He was at sea when the letter came.

Q. And how long had it been since you had seen him before the letter came? A. A few weeks, I think.

Q. He had been out in a few weeks and he had not yet gotten back, and you received a letter? (56) A. That's right.

Q. Do you still have the letter? A. No, I don't.

Q. Do you know what happened to it? A. I gave the letter to Jesse.

Q. Will you tell the Court and jury what the letter said.

Mr. Pogoda: Objection, if the Court please.

The Court: On what basis do you think the letter is admissible so that she can testify to this?

Mr. Starkey: May I approach the bench, your Honor?

The Court: Well, let me ask you this: How did you know the letter was from Massiah?

The Witness: Because it had his return address on it.

*Elita Lloyd—for Government—By the Court*

The Court: Is that the only reason why you knew it was from Massiah? Did you know his handwriting, for example?

The Witness: Yes, I did.

The Court: Did you recognize his handwriting in this letter?

The Witness: Yes, I did.

The Court: Did he sign the letter?

(57)

The Witness: I think he did; yes.

The Court: And you recognized the handwriting throughout the letter as being Massiah's?

The Witness: I believe I did.

The Court: Did you customarily receive letters from him?

The Witness: Once in a while. Not very often.

The Court: There isn't any doubt in your mind that this letter was written by Massiah?

The Witness: No, I don't think so.

The Court: Well, the Court is going to overrule the objection. The witness has shown that she doesn't have possession of the letter anymore and consequently she is in a position to testify to what was in it since she does say that she knows that it was written by Massiah, so I will overrule the objection.

Mr. Somers: Your Honor, may I note for the record that I except to that ruling on the ground that the letter, of course, is the best evidence. This is secondary evidence, and the reason given is certainly not sufficient to overcome the rule of best evidence, the best-evidence rule.

The Court: All right, sir.

Proceed. Answer the question. Tell us what (58) was in the letter.

The Witness: Well, he wrote the usual letter saying "Hello," and "How are you?" and all, and then he sent a message in to Jesse. He said that I should call him and tell him he will bring in some discos, which is a Spanish word for phonograph records. so I called Jesse and gave him the letter.

By Mr. Starkey:

Q. Did you have any conversation with Jesse at that time? A. No; I just told him that Winston had sent this message to him, and then he asked me to call Duke, and I called Duke, and they came and then they went away.

Q. You called Duke? A. Yes.

Q. At Jesse's request? A. Yes.

Q. And what did you say to Duke? A. That Jesse asked him to meet him at my house.

Q. And did Duke come over thereafter? A. Yes.

Q. What happened when he arrived? A. Nothing. He just said hello to me and him (59) and Jesse left. Jesse waited there until he came, and then they left.

Q. Did you see Duke and Jesse thereafter? A. I saw Jesse after that.

Q. When did you see Jesse next? A. I don't remember exactly.

Mr. Starkey: I have no further questions of this witness, your Honor.

* * * *

*Elita Lloyd—for Government—Cross*

(86) • • •

Cross-examination by Mr. Somers:

• • • •

(92) • • •

Q. And was there a period of time when you lived as man and wife with Massiah, this defendant, against whom you are testifying today? A. We didn't live as man and wife.

Q. You didn't live as man and wife? A. No. We did not live as man and wife.

Q. You never occupied the same room? A. That's right.

Q. Do you recall, Miss Lloyd, that you made—you told Mr. Starkey all about your relationship with Massiah in connection with this case and that he took notes? You do recall that? A. Yes, I do.

Q. Now, Mr. Starkey has presented to the Court his (93) notes——

Mr. Starkey: Your Honor, I will object. I think this is speech making rather than asking questions.

Mr. Somers: I am going to present this to her and ask her to read it, and that is all, your Honor.

Mr. Starkey: All right, I ask that counsel do that then.

Q. I am going to offer to you Court's Exhibit 1, and I ask you to read this to yourself, right there, beginning with that paragraph (handing). A. (Witness does as requested.)

Q. Now, in light of that paragraph, would you care at this time to change your statement with respect to whether or not you were living with Massiah as man and wife? A. We did not live as man and wife; we became friends. We became intimate friends for a while but we were not living as man and wife.

Q. You never had sexual relations with him? A. Yes, I did.

Q. I take it, then, that you were on very close terms with him? You were very— A. Yes.

(94)

Q. He was devoted to you, would you say?

Mr. Starkey: Objection.

The Court: I will overrule the objection.

Can you answer the question?

A. Yes, he was——

Q. And you were devoted to him? A. I would say I was.

* * * *

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(441) * * *

SYLVIA FERRIS, called as witness by the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. Miss Ferris, have you been convicted of any crimes? A. Yes, I have.

Q. Were you convicted of a narcotic violation here in the Southern District of New York in 1951? A. Yes.

Q. You were convicted of two violations of the Public Health law for possession of a needle in New York City; is that correct? A. Yes.

Q. And once for prostitution? A. Yes.

Q. And once for possession of narcotics in New York City? (442) A. Yes.

Q. Have you ever used narcotics, Miss Ferris? A. Yes, I have.

Q. Have you used heroin? A. Yes.

Q. Cocaine? A. Yes.

Q. When did you begin to use heroin? A. In 1951.

Q. When did you begin to use cocaine? A. Around 1954.

Q. On how many occasions would you say you have used cocaine. A. Well, 100 or more times.

Q. How did you administer cocaine to yourself? How did you use it? A. Well, I sniffed it and by the needle.

Q. By use of a needle? A. Yes.

Q. Of the numbers of times you have used cocaine, what proportion or what number would you say you have sniffed and used a needle? A. Well, I cannot say actually. It could be maybe a hundred times, over a hundred times.

(443)

Q. Well, by means of a needle or sniffing? A. Well, half and half.

Q. About half and half? A. Yes.

Q. Are you familiar with the appearance of cocaine? A. Yes.

Q. What does it look like? A. It looks like salt somewhat.

Q. Now, do you know a man by the name of Icky Thorn? A. Yes.

Q. Did there come a time when you began to live with him? A. Yes.

Q. When was that? A. In 1956. August of 1956.

Q. Now, did there come a time thereafter when you met a man by the name of Jesse Colson? A. Yes.

Q. Who introduced you to him? A. I met him first in the Lenox Rendezvous.

Q. That's a bar? A. Yes. And then after he came to my house, (444) and when he came to the house, Icky introduced me to him.

The Court: Just a minute, please. Who introduced you to him?

The Witness: Icky introduced me to him. We both knew him.

Q. What was said when Icky introduced you to him at the house? A. Well, when he introduced me to him at the house, Jesse knew that I was interested in cocaine, and he told him, Icky told him that I would be interested in buying some cocaine, that he could see me if I wanted to buy any.

Q. He told you you could see Jesse? A. Yes.

Q. What did Icky say about you, in what capacity did he introduce you to Jesse? A. Well, he told Jesse that I was his girl.

Q. Was there any other conversation at that time?

Mr. Somers: Place it, please, Mr. Starkey.

Q. When was it that you met Jesse at the apartment when Icky introduced you to him? A. In 1957.

Q. What part of the year? (445) A. Around the fall of 1957.

Q. And was there any other conversation at that time? A. Well, at that time Jesse asked Icky if he knew how to cut cocaine, and Icky told him he didn't know anything about cutting cocaine.

Mr. Somers: I am sorry. I can't hear this witness.

The Court: Can you keep your voice up, please, so that counsel can hear you back there?

Read the answer back.

(Answer read.)

Q. Was there anything else said? A. Jesse told me the price that he was charging for the cocaine.

Q. Did you see any at that time? A. At that time he brought a sample by for me.

Q. Was there any conversation about learning how to cut cocaine? A. No, there wasn't.

Q. Did there come a time a week later when you talked with Icky about Jesse? A. Well, a week later Jesse had been calling us, and Icky said that Jesse was going to bring us some (446) cocaine by for our own use.

Q. Well, what did Icky say to you at that time? A. Well, at that time Jesse did bring some cocaine by and left it for us.

Q. Was this a week later? A. About a week later, maybe two weeks later.

Q. Did there come a time—were you present at that time? A. I don't know for sure whether I was present or not.

Q. Well, did this happen on more than one occasion? A. About twice it happened.

Q. When were the two times it occurred? A. About maybe two or three weeks apart.

Q. And how soon after Jesse had been up there the first time?. A. How soon after he had been up the first time?

Q. Yes, when you were introduced. A. Maybe a month after.

Q. And was that the first or the second time that was a month after? A. The first time.

Q. Well, when was the second time? A. The first time was about three to—three weeks (447) to a month after the first time.

Q. When was the second time? A. Three weeks to a month, the second time from the first time.

Q. Three weeks to a month after the first time came the second time? A. Yes.

Q. And how long after Jesse had been up the first time when he brought the sample did the first time occur? A. I don't know what you mean.

Q. You said that this happened twice? A. To my recollection, twice, yes.

Q. All right. Twice after Jesse had been introduced to you at the house, is that right? A. Yes.

Q. How long after the introduction was the first time? A. About a week.

Q. About a week? A. Yes.

Q. Were you present when it happened on that occasion? A. I can't recall.

Q. Were you present when it happened on the second (448) occasion? A. It might have been the first or the second occasion.

Q. Now, on the time that you were not present did you have a conversation with Icky about it? A. Well, when I came home the cocaine was there, and we used it, and I knew that Jesse had left it.

Q. Did you have any conversation with Icky? A. Yes. He told me that Jesse was there and left some cocaine for me.

Q. How much was there? A. Well, what he left, maybe it was about a quarter or maybe less.

Q. A quarter of an ounce? A. Yes.

Q. Now, on the second occasion you were present or on one of the two occasions you were present? A. On one of the two occasions.

Q. What happened on that occasion? A. On the second occasion I came home and it was there, and also he had been there and left it. Jesse had been there and left it the second time.

Mr. Somers: I will object to that and move to strike it out.

(449)

Q. How did you know or what led you—did you have any conversation with Icky about it? A. Well, actually I knew that Jesse was bringing——

Q. No. Did you have any conversation with Icky about it? A. Yes.

Q. What was said? A. He said that Jesse had brought some cocaine for me again.

Q. Did you see any cocaine? A. Yes, I saw it.

Q. How much was there? A. Well, about a quarter—about the amount I don't know too much about, but I imagine it was about a quarter of an ounce.

Q. Did you ever receive any cocaine from Jesse yourself? A. Yes.

Q. On how many occasions? A. About five or six occasions.

Q. During what period? When did this happen? A. About seven or eight months after I met him.

Q. And where did you receive this cocaine from him? (450) A. Well, various places in the street. I would meet him and he would give it to me.

Q. In what quantities? A. From a quarter of an ounce to half an ounce.

Q. And did you pay Jesse for it? A. Yes.

Q. Always? A. On most occasions I paid him, yes.

Q. How many times did you not? A. About twice, maybe once or twice.

Q. And before these occasions when you picked up cocaine and didn't pay Jesse money did you talk with anyone about it? A. Well, he called the house. Jesse called the house when I wasn't home and Icky told me that Jesse had some cocaine for me, and I went and met him and picked it up.

Q. Did he tell you to go over and get the cocaine? A. Yes, he told me that Jesse had called.

Q. Did there come a time when you met a man by the name of Duke or Mitchell Anfield? A. Yes.

Q. And who introduced you to him? A. Jesse introduced me to him.

(451)

Q. Where did this take place? A. In the Lenox Rendezvous.

Q. And when? A. About two months after I had met Jesse.

Q. And what did he say when he introduced you? A. He told me that Duke was his partner and any time I wanted to buy cocaine I could see Duke.

Q. Did there come a time thereafter when you did see Duke? A. Yes.

Q. What happened on that occasion? A. I bought a quarter of an ounce from him.

Q. How much did you pay for it? A. $150.

Mr. Pogoda: May I have the time and place where this alleged sale took place?

Mr. Starkey: Well, the witness testified two months after she met——

I am sorry, your Honor. Withdrawn.

Q. You met Duke about two months after you met Jesse, is that what you said? A. Yes.

Q. Can you fix the time, or how closely can you fix the time when this purchase of cocaine took place? (452) A. Well, I don't remember the exact time.

Q. The best you can do? A. (No response.)

Q. How long after you met him? A. Maybe about two or three months after I met him.

Q. About two or three months? A. Yes. It was about two or three months.

Q. Did you know where Duke was living at the time? A. At that time I knew he was living on Seventh Avenue, yes.

Q. Near what street? A. Between 113th and 115th Street, along there.

Q. Did you ever go there? A. Yes, I did.

Q. Who was there on the occasion you went up there? A. Jesse and Duke.

Q. And how long after you met Duke did this happen? A. Oh, about, maybe a month or two after.

Q. And what happened when you were up there? A. We sniffed some cocaine.

(453)

Q. Now, did there come a time after you met Jesse and Duke when you discussed Duke with Jesse? A. When I discussed Duke with Jesse?

Q. When you talked with Jesse about Duke? A. At one time Jesse came to me and told me about him and Duke.

Q. Well, now, when would you say this occurred? A. Near the end or maybe in '58. The times I can't remember exactly.

Q. About how long after you met either Jesse or Duke? A. Maybe about eight months after.

Q. After you met whom? A. After I met both of them.

Q. You met them close together? A. Yes.

Q. Where did that conversation take place where Jesse was telling you about Duke? A. In the bar. In the Lenox Rendezvous.

Q. What did he say? A. He said that him and Duke wasn't getting along.

Q. What did you say? A. I told him he should be able to handle his (454) business himself.

Q. Did Jesse ever give you anything besides cocaine? A. Yes. He brought me a tray, a ceramic tray.

Q. Did he tell you where the tray was from? A. Yes.

Q. Where? A. From South America.

Q. When did this occur? A. Well, about eight months after I had known him.

Q. Eight months after the fall of '57? A. Yes, it was in '58.

Q. Do you see Duke in the courtroom? A. Yes.

Q. Will you point him out, please? A. He is sitting there in the white shirt.

Mr. Starkey: May the record show that the witness has identified the defendant Anfield.

Q. Do you see Icky in the courtroom? A. Yes.

Q. Where is he? A. Sitting next to him, next to Duke.

Mr. Starkey: May the record show that the (455) witness has identified the defendant Thorn. I have no further questions of this witness, your Honor.

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(539) * * *

BARNEY L. FINK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. What is your occupation, Mr. Fink? A. I am a commercial manager, local commercial manager for the New York Telephone Company.

Q. Local for what district and what area? A. I handle several different exchanges and included is the Lorraine 2 exchange.

Q. And what are your duties? A. Handling—well, complaints, orders, collections, and maintenance of records.

(540)

Q. You are the highest Telephone Company employee that is in charge of this particular subdivision, is that correct? A. That's right.

Q. Now, Mr. Fink, did you bring certain documents with you to the courtroom?

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(549) • • •

By Mr. Starkey:

Q. I ask you to read from the documents to the jury the date of the telephone call, the point of origin, the point of destination, and the person who was called. A. The call was originated on February 20, 1958. The call was made from a coin telephone, RIV 9-9767, by a party representing himself to be Jesse Colson and he asked that the charges be made to LOrraine 2-8373. The call was sent to Valparaiso, Chile. The number called was 6085, and the particular person requested was—I believe it is Rene Huasaff. It looks like an "F".

Q. Will you read also from those records to the jury and the court, Mr. Fink, if the entry appears there, who the subscriber of that LOrraine number was (550) at that time? A. Yes. Mr. Jesse Colson was the subscriber at that time.

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(650) * * *

WILLIAM JOHN MCNAMARA, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. What is your occupation, Mr. McNamara? A. United States Customs Enforcement Officer.

Q. How long have you been so employed? A. 17 years.

Q. Were you on duty on May 6, 1958? A. Yes.

Q. What was your assignment on that date? A. On that day I was assigned to the after section part of the S/S Santa Maria with a partner, Edward Adams.

Q. And what was your assignment at that time? What were you supposed to be doing? A. To be searching the ship.

Q. Did you do so? (651) A. Yes, sir.

Q. What part of the ship did you search? A. The aft peak.

Q. Did you find anything in the aft peak that was not part of the ship's equipment? A. Yes. After moving some rope and some cargo nets I come across five packages.

Q. What was their appearance? A. About three and a half inches by about eight inches, white packages, and they were partially covered by a blue cloth.

Mr. Starkey: I ask that these two items be marked for identification as Government's Exhibits 12 and 13.

(Government's Exhibits 12 and 13 marked for identification.)

Q. Now I show you Government's Exhibits 12 and 13 for identification, sir, and ask you if you recognize either or both. A. Yes, sir, I recognize this one, sir.

Q. Where and when have you seen that before? A. On the Santa Maria. It was partially covering these five packages.

Q. Now, I show you the contents of this bag (652) marked Government's Exhibit 8 for identification, and ask you if you recognize them. A. Yes.

Q. Where and when have you seen them before? A. On the Santa Maria.

Q. What were the circumstances? A. Well, they were on—after I had moved this rope these were laying forward inside of the plastic bag and one was laying outside of it.

Q. Were they in the same condition that they are now? A. No.

Q. How were they different? A. Well, they had powder in them.

Q. Now, then, after you discovered Government's Exhibit 12 for identification and 8 for identification, what did you do? A. Well, I informed my partner, Mr. Adams, to notify my——

Mr. Pogoda: I object to any conversation.

Q. Well, you had a conversation with Adams?

The Court: Just a minute, please.

You can say what you said, but you can't say what somebody told you. Do you understand that?

(653)

Mr. Pogoda: I will object to any conversation

he may have had with a partner not in the presence of the defendants.

The Court: The ruling is still the same. Proceed.

Q. What did you tell Adams to do? A. To notify my superior officer.

Q. Who was he? A. Mr. Wardner Bartlett.

Q. And after you did so, did there come a time when Bartlett came to the place where you were? A. Yes.

Q. Did you have a conversation with him? A. I showed him the packages and he took possession of them.

Q. He took the Government's Exhibits 8 and 12 for identification? A. That's right.

Q. And the powder contained in the packages at that time? A. Yes.

Q. Did there come a time after that when you saw Exhibits 8 and 12 for identification again? A. Yes, about three hours later.

(654)

Q. What happened on that occasion? A. Well, Mr. Bartlett gave it back to me and I initialled the packages.

Q. Then what did you do with them? A. And I took them in my possession and we left the ship and we proceeded to our headquarters at 54 Stone Street and I gave them to Captain Conroy, who was the duty captain at that time, and he put them in a brown envelope, tied them and sealed them. Then he put it into a safe.

Q. Did there come a time thereafter when you again saw the packages, 8 and 12 for identification? A. The following day.

Q. You received them back from Captain Conroy? A. From the duty captain at that time. That was May 7, in the morning.

Q. You had seen them sealed before when you previously submitted them, the day before? A. Yes, sir.

Q. Was the seal still intact? A. Yes.

Q. Did you see any evidence that they had been tampered with? A. No, sir.

(655)

Q. After they were returned to you on the 7th, what did you do with them? A. Then we proceeded to 201 Varick Street, U. S. Customs Laboratory, and I turned them over to Mrs. Garbutt, a customs chemist.

Q. Were they still in a sealed condition? A. Yes.

Q. What did you do then? A. Well, she took a test on it and waited, and then she returned them to me.

Q. You received them back from Miss Garbutt? A. Yes.

Q. What did you do with them thereafter? A. Then I took them down to our seizure room and I turned them over to Mr. O'Connell.

Q. Did you get a receipt? A. Yes.

Q. No. 3096? A. Yes.

Q. Did there come a time on June 15 of this year when you again—well, withdrawn.

Did there come a time on June 15 of this year when you received this bag, Government's Exhibit 6 for identification, from Mr. O'Connell? (656) A. Yes.

Q. Was that in a sealed condition at the time? A. Pardon me?

Q. Was it in a locked and sealed condition? A. The bag was sealed. It was stapled.

Q. What did you do with this bag after you received it from Mr. O'Connell? A. I gave them to you, sir.

Q. Now, in the course of your activities on the 6th in working aboard the vessel with Adams, did there come a time when Adams showed you anything? A. Yes. About 15 minutes later he came across a blue cloth package.

Q. I show you Government's Exhibit 13 for identification, and ask you if you recognize that? A. Yes.

Q. Is that the blue cloth that Adams showed you on that occasion? A. Yes.

Q. Where was this? A. Well, that was concealing the package that Mr. Adams found.

Q. I show you Government's Exhibit 10 for identification, and ask you if you recognize— (657) A. Well, I didn't see those, sir.

Q. You didn't? A. No.

Q. All right, sir.

Now, do you know when the contents of Government's Exhibit 8 for identification, these bags or packets that you found, were removed from these packets? A. Yes. Up in the customs laboratories.

Q. You saw the chemist remove— A. No, I didn't.

Q. You gave those to the chemist? A. Yes.

Q. Did you receive the packages back? A. Yes, and five bags, I think.

Q. Now I ask you to step down, Mr. McNamara, and look at Government's Exhibits 9-A, B, C, D and E for identification, and ask if those are the nine bags which you received from Miss Garbutt, the chemist. A. Nine bags?

Q. Five bags, I am sorry. A. Yes.

Q. And those are the bags that you submitted to Mr. O'Connell? (658) A. Yes, sir.

Q. What did you do with these? A. I submitted them, too.

Mr. Starkey: I have no further questions of this witness.

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(671) • • •

EDWARD ADAMS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. Your occupation, sir? A. Customs Enforcement Officer, sir.

Q. How long have you been so employed? A. 15 years, sir.

Q. Were you on duty on May 6, 1958? A. Yes, sir, I was.

Q. What was your assignment on that date? A. I was assigned as a customs searcher, assigned to the Santa Maria on Pier 57, North River.

Q. With whom did you work on that date? A. With Officer McNamara.

Q. Now, I show you, sir, Government's Exhibit 13 for identification, and ask you if you recognize that. A. It looks like something I marked. Yes, sir, this is it.

(672)

Q. Where and when have you seen it before? A. On the date you mentioned, sir.

Q. May 6th? A. That's right, sir.

Q. Where? A. This cloth covered a package which I found back aft on the Santa Maria.

Q. I show you Government's Exhibit 10 for identification and ask you if you recognize that.

(No response.)

Q. You may take it out of the plastic case if you need to sir. A. Yes, sir, this is a part of that package, sir. This is my identification on there.

Q. A package which Government's Exhibit 13 for identification covered? A. Yes, sir.

Q. Now, after you made this discovery, Mr. Adams, what did you do? A. I notified the inspector in charge.

Q. Who was that? A. Inspector Levkulic.

Q. Did there come a time when you gave Government's Exhibit 10 for identification to Inspector (673) Levkulic? A. Yes, sir, we left it there where we found it, and Inspector Levkulic came and picked it up and brought it back to headquarters aboard ship.

Q. And did there come a time—and was it in the same condition then as it is now, or did it have something in it? A. There was contents of white powder in there, sir.

Q. Did there come a time when you received this package back? A. Yes, sir, about three hours later, when we were leaving the ship, Inspector Bartlett turned over that package to me to bring back to headquarters.

Q. And what did you do with it? A. We brought it back to headquarters at 54 Stone Street and the captain put a seal around that and he put it in the safe.

Q. Now, did there come a time when you received it again? A. Yes, sir, the following day we picked that

package up in the morning, we brought it over to the chemist.

Q. Was it sealed, in a sealed condition when (674) you again received it? A. Yes, sir, it was.

Q. Did you see any evidence that it had been tampered with? A. No, sir.

Q. You brought it to the chemist? A. Yes, sir.

Q. And what happened when you brought it—the chemist was Miss Garbutt? A. That's right, sir.

Q. What happened when you gave it to Miss Garbutt? A. She made different tests on it, and she returned the report with the packages, back to me, sir.

Q. Now, I show you Government's Exhibit 11-A and 11-B for identification, and ask you if you recognize them. A. These I don't think we marked, sir, but I see the chemist's mark is on there, sir.

Q. Well, have you seen them before? A. Yes, sir.

Q. Where and when? A. At the laboratory at the chemist's, sir.

(675)

Q. You received them from Miss Garbutt? A. That's right, sir.

Q. Along with Government's Exhibit 10 for identification? A. Yes, sir.

Q. And what did you do with it? A. We brought it downstairs to the seizure room, we got a receipt for it, and we turned it over to the seizure clerk down there, sir.

Q. Mr. O'Connell? A. That's right, sir.

Q. And you got receipt No. 3097? A. Yes, sir, 3097.

Q. I show you Government's Exhibit 7 for identifica-

tion, and ask you if you recognize it. A. Yes, sir, that I do, sir.

Q. Where and when have you seen that before? A. That we picked up Thursday. I think it was the 15th, from Mr. O'Connell.

Q. And was that envelope marked 3097? A. Yes, sir, the bag was stamped with the identification number on it.

Q. Was it locked closed? A. Yes, sir.

(676)

Q. Now I show you Government's Exhibit 12 for identification and ask you if you recognize that. A. This, from what I recall, is Officer McNamara's wrappings on the package.

Q. What do you mean his wrappings? A. Well, the package he found, sir.

Q. At the same time? A. No, sir. About, oh, 10 or 15 minutes before I found mine, sir.

Q. Do you recognize these packages? A. Yes, sir, I do, sir.

Q. Where and when did you see the one you looked at before? A. This here package right here, sir?

Q. Yes. A. Yes. That one, when officer McNamara first found it I was there with him and he called me to get Inspector Bartlett to pick up this package.

Q. Did you see him give them to Inspector Bartlett? A. Yes, sir. I was there when he picked them up.

Q. Did you see him receive them back? A. Yes, sir, he received them back when I (677) received mine.

Q. And he accompanied you to the duty captain? A. That's right, sir.

Q. Did you see him receive them back the next day? A. Yes, sir, I was with him then, too.

Q. Did you see him submit it to the chemist and get it back from the chemist? A. Yes, sir, I accompanied him at all times.

Mr. Starkey: No further questions.

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(682)

DANIEL J, O'CONNELL, was recalled and testified further as follows:

Direct examination by Mr. Starkey:

Q. Mr. O'Connell, when you testified previously I believe we understood you to say that the bags containing the white granular material which were submitted to your custody on May 7 were never opened; is that right? A. That's right.

Mr. Pogoda: May I object to the form of the question. He is including facts which this witness never testified to. "White granular." Mr. O'Connell never so testified.

The Court: All right, rephrase the question. I sustain the objection.

Q. I show you, Mr. O'Connell, or I ask you to come off the stand and I ask you to examine Government's Exhibit 11-A and B for identification, and 9-A, B, C, D and E for identification.

After you received them into your custody on May 7,

1958, can you state of your own knowledge whether or not they were ever opened again?

Mr. Pogoda: That was gone over and it is improper redirect.

(683)

The Court: I don't know the purpose of what you are trying to say. As I remember your testimony you said that you put them all in that big bag, didn't you?

The Witness: Yes, sir.

The Court: You put nine in one bag and ten in the other?

The Witness: Five in one bag and two in the other.

The Court: Five in one bag and two in the other, is that right?

The Witness: That's right.

The Court: And you sealed the bags, the large bags?

The Witness: Put a clip on them.

The Court: And then you put them in the vault?

The Witness: Yes.

The Court: And you did that on May 7?

The Witness: That's right.

The Court: And you took them out on June 15, 1961 and gave them back to Mr. McNamara?

The Witness: McNamara and Adams.

Q. Do you know if these bags were ever opened (684) in the meantime?

Mr. Somers: I object to that.

Mr. Pogoda: I object, your Honor, and ask the Court to——

The Court: I sustain the objection. The witness has already testified to this. He has already said that the bags, so far as he knows, weren't reopened.

Mr. Starkey: It is what I thought to be a misunderstanding in that regard either on my part or the witness' part that I sought to clarify at this time, and I ask the Court's leave to go into this briefly in order to clarify what I consider to be confusion.

The Court: We are getting more confused, but anyway, take the stand now. Now let's get on with this. We have been over it once.

Mr. Carluccio: If the Court please, I respectfully request that any further testimony in this regard be without the presence of the jury because of the reason of the motion that I wish to make, and I wish not to say anything that would be detrimental, but I feel that there should be a conference with counsel for the government and with (685) counsel for the defense, and I say it is germane to the reason why this gentleman is being brought back on the stand, and I will point out to your Honor at that point.

The Court: That is denied. Let's proceed.

By Mr. Starkey:

Q. Do you know whether these bags, sir, 6 and 7 for identification, were reopened? A. These bags were reopened.

Q. What was the purpose of them being reopened? A. For further investigation on the outer wrappers.

Q. On the outer wrappers? A. Yes.

*Daniel J. O'Connell—for Government—Recalled—Direct*

Q. Were the outer wrappers removed at that time? A. Yes, they were.

Q. Were these other bags, 9-A, B, C and D, touched at that time? A. No, sir.

Q. Were the wrappers put back on these bags? A. Yes.

Q. And the bags resealed? A. Yes, sir.

(686)

Q. Were 9-A through E touched or 11-A and B touched at that time? A. No, sir.

Mr. Starkey: That is the point.

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(700) * * * :

MICHAEL LEVKULIC, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. Your occupation, sir? A. Customs Inspector.

(701)

Q. How long have you been so employed? A. Ten years.

Q. Were you on duty on May 6, 1958? A. Yes, sir.

Q. Did there come a time on that date—what was your assignment? A. I was assigned to search a vessel at 57, North River, Santa Maria.

Q. Did there come a time on that date that you received some packages from customs enforcement officer Adams? A. Yes, sir.

Q. I show you Government's Exhibit 10 for identification, and ask you if you recognize that package?

Mr. Pogoda: I am assuming that all of the testimony about these packages, your Honor, will subsequently be tied in with this case and that they are being taken subject to connection.

The Court: Well, there is no question about that. They are not being offered in evidence yet at all, and of course they would have to be tied in with this case.

Mr. Pogoda: Except that they are never (702) admitted into evidence and I believe the defendants' rights have been prejudiced by this display of bags and intrigue.

The Court: I think we will have to reach that issue after the offer in evidence is made.

Mr. Pogoda: I was wondering if the Court wouldn't at this point direct Mr. Starkey to go forward in an effort to get them in evidence, that that would be a proper way before we go on any further with testimony which may be very prejudicial and have no bearing on the case.

The Court: I assume that Mr. Starkey is attempting to complete his chain, isn't that what you are trying to do?

Mr. Starkey: Yes, your Honor.

The Court: So perhaps we can get through with this quickly and then get a ruling as to their admissibility. All right, sir.

Mr. Starkey: I believe that question was not answered, your Honor.

The Court: Did you ever see them before?

The Witness: May I look at them, your Honor?

The Court: Surely.

(703)

The Witness: Yes, sir.

Q. Where and when have you seen that exhibit for identification before? A. This package was shown to me by Customs Enforcement Officer Adams back aft on the Santa Maria. He pointed the packages out to me and I picked them up.

Q. Did there come a time thereafter when you gave them to Inspector Barber? A. That's right, sir. I took the package and brought the package up to Customs Inspector Bartlett and turned them over to——

Q. Was Government's Exhibit 10 for identification in the same condition then as it is now or did it have something in it at the time? A. At the time that I received the package it was bulkier than it is now.

Q. Were you present when Inspector Bartlett gave Government's Exhibit 10 for identification back to Mr. Adams later that day? A. I can't recall.

Mr. Starkey: No further questions.

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(725) • • •

FREDERICK ARZT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. You are a captain in the Coast Guard, Captain Arzt? A. That is correct.

Q. How long have you been in the Coast Guard? A. 32 years, sir.

Q. And what are your duties? A. Presently I am assigned as senior investigating officer of the United States Coast Guard, New York, New York.

Q. Now are you familiar with the records and method of keeping records of the Coast Guard? (726) A. You mean all records, sir, or specific records?

Q. Are you familiar with the method of keeping—well, particularly discharges of seamen? A. I am, sir.

Q. Do you have the records of the Coast Guard relating to certain seamen which you have been requested to bring to court today? A. Yes, sir.

Q. Do you have the discharges of Winston Massiah from 1956 through 1958 with you? A. Yes, sir.

Q. Do you have the discharges for the same years of Francis Torres, Mitchell Anfield, Jesse Colson, and Paul Ferdinand King with you? A. Yes, sir.

Q. Will you produce them, please?

(Witness complies.)

Mr. Starkey: I ask that the records of Mitchell Anfield be marked Government's Exhibit 16 for identification.

(Government's Exhibit 16 marked for identification.)

Mr. Starkey: I ask that the records of (727) Jesse Colson be marked Government's Exhibit 17 for identification.

(Government's Exhibit 17 marked for identification.)

Mr. Starkey: I ask that the photostat of a discharge of Paul King be marked Government's Exhibit 18 for identification.

(Government's Exhibit 18 marked for identification.)

Mr. Starkey: I ask that the discharge of Winston Massiah be marked Government's Exhibit 19 for identification.

(Government's Exhibit 19 marked for identification.)

Mr. Starkey: I ask that the discharges of Francisco Torres be marked Government's Exhibit 20 for identification.

(Government's Exhibit 20 marked for identification.)

By Mr. Starkey:

Q. I show you Government's Exhibit 16 through 20 for identification, Captain Arzt, and ask you if you recognize those as documents kept by the Coast Guard in the regular course of business. (728) A. Yes, I do, sir.

*Frederick Arzt—for Government—Direct*

*Statement by Witness Arzt*

Q. And is it the regular course of the activities of the Coast Guard on or about the time of the dates of those discharges to make and keep such records? A. Yes, sir, it is required by Federal Statute RS-4551.

Mr. Starkey: I will offer Government's Exhibits 16 through 20 for identification in evidence, your Honor.

The Witness: Judge, may I make a request for the Commandant?

The Court: Yes, sir.

The Witness: Sir, in the keeping of these records the original goes to the man and the only duplicate that the government has of a chronological record of every seaman's service aboard merchant vessels is the duplicate that has been marked for identification and that has now been proffered in evidence. If these go into the records, sir, the records of the Coast Guard are compromised insofar as these five men's records are concerned, and the Commandant has requested me to respectfully ask your Honor that if they go into evidence, would it be (729) possible that photostats be made of the records so that they could be returned to the Commandant.

The Court: All right, sir, we will substitute photostats if they are admitted into evidence. Are you finished with the witness, Mr. Starkey?

Mr. Starkey: I am, your Honor.

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(748) • • •

JOSEPH DE VITO, called as a witness, having been first duly sworn, testified as follows:

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(749) • • •

Direct examination by Mr. Starkey:

Q. What is your occupation, Mr. De Vito? A. Customs marine officer.

Q. What are your duties, sir? A. I effect the formal entrance and clearance of vessels in the foreign trade.

Q. Are you familiar with ship manifests, and the method of keeping ship manifest records? A. Yes.

Q. Is that part of your duties? A. Yes, sir.

Q. I show you Government's Exhibit 23 for identification and ask if you recognize that document? A. Yes, I do. This is the vessel's inward manifest.

Q. What vessel, and can you tell the jury—well, what vessel was covered? A. This is the American steamship Santa Maria.

Q. It is the manifest for what voyage? A. For the foreign voyage.

Q. When did it leave and when did it return? A. Well, to leave I wouldn't know the exact date. (750) This is arrival. I haven't got that information with me but it can be available.

Q. What is the arrival date? A. The arrival date is on May 7, 1958.

Q. Did it arrive May 7th or were those records cleared on May 7th? A. She was entered, formally entered on May 7th. Her actual arrival off quarantine is 1:05 p.m. of May 6, 1958.

Q. Is that manifest kept in the regular course of the business of your office? A. Yes, sir.

Q. And was it the regular course of business at or about the time of the arrival of this vessel on this particular voyage, to prepare and keep such a record? A. Yes, sir.

Mr. Starkey: I will offer this manifest, your Honor.

The Court: You might explain to counsel what the purpose of this is. You don't have to do it in front of the jury.

(Discussion off the record outside the hearing of the jury.)

Mr. Somers: No objection.

(751)

(Government's Exhibit 23 for identification received in evidence.)

Mr. Starkey: I would like to ask the witness several further questions insofar as the contents of the record is concerned, your Honor.

By Mr. Starkey:

Q. Mr. De Vito, do you know what a vessel of the United States is? A. Any vessel documented under the laws of the United States.

Q. The United States Registry? A. The United States Registry.

Q. Does that manifest show whether or not this vessel, the Santa Maria, is of United States Registry? A. Yes, sir, it does. It was registered at New York on January 5, 1950.

Q. Does that vessel show whether or not it was engaged in a foreign voyage at this time? A. Yes, sir.

Q. Was it a foreign voyage? A. It engages in foreign voyages.

Q. Do you see three pounds eight ounces 256 grains of cocaine or for that matter any amount of cocaine manifested or listed as part of the ship's stores?

(752)

Mr. Somers: I will object to that, your Honor. This apparently is predicated upon an expectation of a negative answer. I strongly object to that, your Honor.

The Court: On what ground?

Mr. Somers: On the ground that this is improper, simply improper.

The Court: Why?

Mr. Somers: Because this man is putting—the examiner is putting into the mouth of the witness, by this indirection, testimony that he never could get in otherwise. He is going to say no. He might just as well say 27 pounds of narcotics, is that on the manifest. The man will say no. But look how inflammatory that is to a jury, your Honor.

The Court: Well, how do you suggest that it be handled, sir?

Mr. Somers: He shouldn't say it. What does appear on that manifest. Let him read it. The jury can deduce from that whether or not this contraband was ever on that manifest.

The Court: That manifest has possibly hundreds of articles.

Mr. Somers: Well, that's the only way to do it.

(753) Certainly not like this.

*Joseph De Vito—for Government—By the Court*

The Court: That is overruled. Answer the question.

Did you study that manifest yourself sir?

The Witness: Yes, sir.

The Court: Did you go through it all?

The Witness: Just now, no.

The Court: Did you ever go through it?

The Witness: Yes, I have.

The Court: Did you go through it, after being instructed to look on the manifest and see whether or not there was any cocaine manifested?

The Witness: After being instructed, yes.

The Court: You did?

The Witneess: Yes.

The Court: Did you go through the whole manifest, article by article?

The Witness: Not article by article.

The Court: Well, how did you go through it?

The Witness: Through the store list where it was originally supposed to be manifested. Ordinarily they don't manifest in the cargo section of any narcotics.

Mr. Starkey: I think your Honor by one or two questions I can clear the matter up.

(754)

Q. Is there one list of ship's stores? A. That's right.

Q. Is any cocaine listed on the ship's stores? A. As far as I could see, none.

Q. Well, have you looked? A. I have looked. I just glanced a few minutes ago down in there and there is none here. There is narcotics but no cocaine as far as I can see here.

Q. In the ship's stores there are some narcotics? A. Some, yes.

Q. Among them is there any cocaine? A. No.

Q. What are the narcotics? A. Well, like morphine, morphine sulfur, and cocaine, but of course that is a medicine, more or less, but that is about all. As far as I know of narcotics, I don't know too much of narcotics.

Q. There is a listing there, is there not, giving the narcotics and the ship's stores? A. That's right.

Q. There is no cocaine in that listing? A. None. None listed.

Q. Now, will you look at the manifest and insofar as you have examined it there is no cocaine (755) manifested? A. Yes, sir.

Q. Have you looked at the discrepancy sheet? Do you know what a discrepancy sheet is? A. Yes, sir.

Q. What is a discrepancy sheet? A. A discrepancy sheet is stuff that is manifested but not found. That is stuff that is not manifest or manifest but not found. That is the discrepancy sheet. As articles that are noted on here that were not found or was manifested and not found.

Q. And will you read to the jury what was found but not manifested on this voyage, according to the discrepancy sheet. A. Manifest but not found——

Q. No, found but not manifest, sir. A. Found but not manifested. Well, according to this there is one box of engine parts, four cases of machinery, five packages of powder containing narcotics, and two packages of powder containing narcotics.

Mr. Starkey: No further questions.

* * * *

(1127)

FRANK TORRES, called as a witness by the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. Do you know Jesse Colson, Mr. Torres? A. Yes, I do.

Q. First, have you ever been convicted of a crime? A. Yes.

Q. How many times? A. Twice.

Q. When and for what crimes? A. 1951 and 1952.

The Court: Keep your voice up, please.

A. 1951 on a marihuana charge, and in 1952 for possession of heroin.

Q. Now, I refer you to August of '57 and ask you if there came a time in that month when you saw Jesse Colson? A. Yes. I took the ship Santa Maria in August '57. I met him in the company offices.

Q. Do you know what part of August it was? A. In the doctor's office.

Q. What part of the month of August, do you (1128) recall? A. August 27 or 28.

Q. And you saw him in the doctor's office? A. Yes.

Q. Where was that? A. That is in the Grace Line pier.

Q. Did you have a conversation with him? A. Yes.

Q. What did he say and what did you say? A. He said he was taking a trip off, that I should wait for him until he got back on because he had a connection of cocaine.

Q. Did he say where? A. No, not at the time, no.

Q. What did you say? A. I said I would wait until he got back on again.

Q. Was there any conversation about when that would be? A. At the end of the trip.

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Q. How long does a trip take? A. 38 days.

Q. Do you know Winston Massiah? A. Yes.

(1129)

Q. Do you see him in the courtroom? A. Yes.

Q. Will you point him out, please.

The Court: Tell us where he is sitting.

A. Right behind the DA on the right.

Mr. Starkey: May the record now show, your Honor, that he has identified the defendant Massiah?

The Court: All right, proceed.

Q. When did you first see Massiah? A. On board the ship.

Q. On this voyage? A. Yes.

Q. When did the ship get back? A. October 8.

Q. Did there come a time thereafter when you saw Colson again? A. Yes.

Q. Where? A. When we got back from the trip on the ship.

Q. He came aboard the ship? A. Yes, sir.

Q. Did you have a conversation with him? A. Yes.

Q. What did he say and what did you say? (1130) A. I told him I was getting off the ship.

He told me if I wanted to invest the money I had, give it to him so he could invest it for me.

Q. What did you say? A. I told him no.

Q. Was there any further conversation? A. Well, he told me that I should wait until the next trip when the ship got back, that he had a man bringing some stuff for him.

No, excuse me. He said to wait until he got back.

Q. Until he got back? A. Until he got back and we could talk business then.

Q. What kind of business? A. The cocaine business.

Q. Did you talk to anyone about this conversation with Jesse Colson? A. Yes.

Q. Who was that? A. A friend of mine.

Q. Did there come a time when you and that friend again saw Colson? A. Yes.

(1131)

Q. When was that? A. The date I can't recall very well.

Mr. Carluccio: Your Honor, at this point could he kindly say the friend's name, the place, and he doesn't know the time, but if he has the friend's name and the place of this conversation, I would like to have it.

The Court: Suppose you tell us the friend's name and the place.

The Witness: Jimmy Torrens.

Q. Mr. Torres, I show you Government's Exhibit 21, the next to the last page, and I ask you to look at that and see if that refreshes your recollection as to when you next saw Jesse Colson.

Mr. Carluccio: Objection. Completely leading, your Honor. I don't think he could give him the information and tell him to pick out when he next saw Jesse Colson.

The Court: That is overruled. I think it is proper direct examination.

Let the record show that this exhibit shows the sailings of this witness on the Santa Maria.

Is that what it shows?

The Witness: Yes.

(1132)

The Court: Is it your sailings or Colson's sailings?

The Witness: Colson's.

The Court: All right. Yes.

The Witness: Yes, I see it. November 18.

Q. Of what year? A. of '57.

Q. Where did you see Colson on that day? A. On the ship.

Q. Who was present? A. Only me, only us.

Q. Who? A. Colson and me.

Q. Where was Torrens? A. He was in the messroom.

Q. Did you have a conversation with Colson? A. Yes.

Q. What was said on this occasion? A. That he had brought a load, that I should call him up that same night at his house.

Q. Did you see anybody else you knew aboard the ship at this time? A. No.

Q. Did there come a time when you did go up (1133) to his house? A. Yes.

Q. When was that? A. The same day.

Q. With whom did you go up there? A. Beg your pardon?

Q. With whom did you go there, with anyone? A. With Torrens.

Q. You had a conversation with Colson at that time? A. Yes.

Q. What was said on that occasion? A. He had some samples which I tasted.

Q. Samples of what? A. Cocaine.

Q. How did it taste? A. Bitter.

Q. What was said? A. He said it would cost us 500 cash and 600 if credit.

Q. 500 in cash and 600 if credit? A. Yes.

Q. What did you say? A. I told him I only had 300, and I would pay (1134) him the 300 later on.

Q. Did he make delivery at that time? A. The day after.

Q. Do you know why he didn't make delivery at that time? A. He didn't have it in his house, I guess.

Q. Where did he make delivery? A. The day after.

Q. Where? A. In my house.

Q. What did he give you? A. An ounce.

Q. Is that scale weight? A. No. 16 spoons.

Q. Are you familiar with the appearance of cocaine? A. Yes.

Q. What does it look like? A. Sugar or salt.

Q. And have you used cocaine? A. Yes.

Q. On about how many occasions, would you say? A. Quite a number of occasions.

Q. When did you begin? (1135) A. About 1950.

Q. How did you use it when you used it, needle or snort? A. Snort.

Q. Just snort? A. Yes.

Q. You are familiar with the effect of cocaine upon you when you use it? A. Yes.

Q. Did you use any of this? Did you use any of this delivery of Colson's? A. Yes.

Q. Do you know whether or not it was cocaine? A. It was.

Q. Now, did there come a time thereafter when you again talked to him about cocaine? A. That was the end of December. No. I saw him again a week after that.

Q. What happened on that occasion? A. I took a quarter of an ounce.

Q. Where? A. In his house.

Q. How much did you pay for it? A. $125.

(1136)

Q. Did you use any of that? A. Yes.

Q. Do you know whether or not it was cocaine? A. It was.

Q. Did you see Colson thereafter? A. Yes. I saw him again but it was a week after I saw him and he had no more.

Q. What did he say? A. He said he was waiting for another shipment that a friend of his was going to bring over.

Q. Now, did there come a time when you again met the Santa Maria? A. Yes.

Q. When was that? A. The end of the year. Late December.

Q. The end of the year. Late December. A. What happened? Did you go aboard? A. Yes.

Q. What happened when you went aboard? A. I was approached by Winston.

Q. Massiah? A. Massiah.

Q. What was said? A. He asked me how many pieces did I want.

I told him I didn't know what he was talking (1137) about.

Q. How many what? A. How many ounces.

Q. Yes? A. I told him I didn't know what he was talking about.

Then he said Colson had informed him what was going on between us.

Q. What did you say?

Mr. Carluccio: May a date be fixed with reference to this?

Mr. Starkey: The witness said it was the end of December.

Mr. Carluccio: Your Honor, I would like the witness to say it.

Mr. Starkey: The witness said it.

The Witness: December 30.

The Court: The 30th of December.

Mr. Carluccio: Your Honor, I object to counsel leading the witness. I remember that he said the end of the year and counsel used the word "December," and I object to any further leading questions. I would like the record to be clear. What date does he say it was?

(1138)

The Court: He said the 30th of December.

The Witness: Late December. December 30.

Q. Now, will you give that conversation, Mr. Torres? A. Beg your pardon?

Q. The conversation you and Massiah had at this time. A. He approached me and he asked me how many ounces I wanted.

I told him I didn't know what he was talking about.

He said that Colson had told him what was going on between us two.

Q. What did you say to that? A. I didn't say anything. I still said I didn't know what he was talking about.

Q. Was there anything further said? A. No, nothing else.

Q. Did you just part company? A. No. We went to a telephone and called Colson.

Q. At whose suggestion? A. At his suggestion.

Q. And what happened after that? (1139) A. Well, Colson came to my house the day after that.

Q. Was there any conversation between anyone and Colson, or between you and him at the time of the call? A. At the time of the call we talked to Colson on the telephone, and he said he would deliver or he would see me the day after in my house.

Q. And did you see him after that? A. Yes.

Q. Where? A. In my house.

Q. What was the conversation, if any? A. He wasn't satisfied the way Winston was running the business, that if I should get on the Grace Line ship I would take over his job.

Q. Was there anything else said? A. He also said how I should keep if in my locker, when the ship left Valparaiso, and then transfer it to the back of the ship, to the stern, before it hit New York.

Q. Was there anything else said? A. No, nothing else.

Q. Do you recall the conversations?

(1140)

Mr. Somers: I beg your Honor's pardon. I am having great difficulty in hearing Mr. Torres.

The Court: All right. Would you keep your voice up, please.

The Witness: Yes, sir.

The Court: All right, sir. Ask your question.

Q. Do you recall anything about bringing it ashore?

Mr. Carluccio: Objection, your Honor. There is no testimony about bringing it ashore. He is lead-

ing the witness again, your Honor. I object to counsel leading the witness.

Mr. Starkey: The witness testified, your Honor, that his memory was exhausted.

The Court: I will overrule the objection.

Was there any conversation about bringing it ashore?

The Witness: Yes. He said a longshoreman would contact me and I should give it to him to bring it ashore.

Q. Can you recall any other conversation at that time? A. Not at that time, no.

(1141)

Q. Do you recall if there was any conversation about the events of the previous day? A. I can't recall.

Q. Did you transact any business with Colson on this occasion? A. Not on this occasion.

Q. You did not? A. No.

Q. Did there come a time thereafter when you saw him again? A. I saw him about a week after that.

Q. And what happened on that occasion? A. He brought me half an ounce of cocaine on consignment.

Q. Did there come a time when you paid him for it? A. Yes.

Q. How much did you pay him? A. $300.

Q. Did you use any of this? A. Yes.

Q. Did there come a time when you saw him after that? A. The week after he brought me another half an (1142) ounce.

Q. What did you do with that? A. Well, I disposed of it.

Q. Did you use any of it yourself? A. Yes.

Q. Did you ever do business with Colson after that occasion about which you just testified?

Mr. Pogoda: Objected to as to form, and for the further reason that this witness is not named in the indictment as a defendant or a co-conspirator, nor is there an allegation of any overt act, that these defendants are called upon to meet with respect to this witness, and I submit, sir, that the entire line of questioning about his transactions or business with Colson is inadmissible, and not part of this case, and certainly is not required to be met by the defendants.

The Court: Overruled. Proceed.

(Question read.)

A. At the beginning of April he brought me another half an ounce. I wasn't satisfied with what he brought me so he lowered the price to $225.

Q. What was the conversation about the half ounce that he brought you? (1143) A. He said somebody must have been fooling around with it because it wasn't supposed to be what he wanted.

Q. Did he say who it was? A. No.

Q. Did you use any of this delivery? A. Yes.

Q. Were all of these deliveries cocaine? A. Yes.

Q. Was there any agreement as to payment for Colson on this last occasion? A. No.

Q. Did you ever pay him? A. No.

Mr. Starkey: No further questions.

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(1144) • • •

Cross examination by Mr. Carluccio:

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(1160) • • •

Q. Would you tell me how this person Torrens (1161) figured into your negotiations and dealings between yourself and Colson? A. He was my partner.

Q. He was your partner? A. Yes.

Q. Well, what do you mean by he was your partner? In what enterprise, in what business was he your partner? A. Well, I asked him to put up half of the money the first time we bought anything from Colson.

Q. What else? A. That's the only time he had anything to do with it.

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(1166) • • •

Cross examination by Mr. Pogoda:

Q. Mr. Torres, the cocaine you bought from (1167) Colson wasn't for your use alone, was it? A. Beg your pardon?

Q. The cocaine you bought from Colson wasn't alone for your use? A. No.

Q. You were going to push it, weren't you? A. Yes. Some of it.

Q. You were a pusher in this narcotic trade, were you not? A. Yes.

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(1263) • • •

WARDNER H. BARTLETT, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. What is your occupation, sir? A. I work for the Treasury Department, Bureau of Customs.

Q. What is your title? A. Supervisory Customs Enforcement Officer.

Q. How long have you been so employed? A. I have been in this title one year.

Q. What are your duties as a customs enforcement officer? A. I am in charge of the searching of vessels.

Q. I show you Government's Exhibit 25 for identification and ask you if you recognize these documents. A. These documents here include declarations. Each crew member makes out a declaration of his imports.

Q. Are you familiar with the appearance of such records? A. Yes, sir.

(1264)

Q. How long have you been dealing with them? A. Ten years.

Q. Are you familiar with the procedure of the execution, preparation and maintenance of those records? A. Yes, sir.

Q. Do you know if they are prepared in the regular course of the operations of customs? A. They are, sir.

Q. Is it the regular course on or about the entry of a specific ship for such documents to be made and kept by customs? A. It is. It is part of the entry.

Mr. Starkey: I offer these documents, your Honor.

The Court: Let counsel see them.

While they are looking at them go on to something else.

Q. Were you on duty on May 6, 1958? A. Yes, sir.

Q. What was your assignment on that date? A. I was assigned in charge of the search of the Santa Maria.

Q. Did there come a time later on that day when you took any packages into your custody? (1265) A. Yes, sir.

Q. How many packages did you receive? A. On the first occasion I received five packages.

Q. From whom did you receive them? A. From Mr. McNamara.

Q. Now I show you Government's Exhibit 8 for identification and ask if you recognize the contents. A. Yes, sir.

Q. What? A. Yes, sir.

Q. Where and when have you seen them before? A. On May 6 I saw them for the first time in the aft peak of the Santa Maria.

Q. Who called your attention to them? A. Mr. McNamara.

Q. I show you Government's Exhibit 10 for identification and ask if you recognize those items? A. Yes, sir, I do.

Q. Where and when have you seen that before? A. I saw it on the same day, approximately 15 or 20 minutes after I saw the first packages.

Q. Was it Inspector Levkulic who gave you Government's Exhibit 10 for identification? (1266) A. Yes, sir.

Q. Were these packages, Government's Exhibits 8 and 10 for identification in the same condition as they appear now in the courtroom or did they have something in them

at the time? A. They had a white powder in each one of the containers.

Q. Now I show you Government's Exhibits—I show you first of all Government's Exhibit 13 for identification and ask you if you recognize that cloth. A. Yes, sir.

Q. Where and when have you seen that before? A. I saw it on May 6, 1958. This cloth wrapped up—Adams' seizure.

Q. The packages which you were just shown? A. Right. The last one. The two packages within one. The smallest of the two.

Mr. Carluccio: Will counsel mention the exhibit number of Adams' seizure?

Mr. Starkey: 11-A and B for identification.

Q. Government's Exhibit 13 for identification, was that in the same condition as you see it now? A. Yes.

Q. Was it pulled apart, flat? (1267) A. No.

Q. How was it? A. It was wrapped around the packages, held by a piece of tape.

Q. How was it secured? A. By a piece of tape, adhesive tape.

Mr. Starkey: I believe in regard to Adams' seizure this witness was only shown 10 for identification. 11-A and B are the contents.

Mr. Carluccio: For clarification of the record, is it that No. 13—it covered what exhibit?

Mr. Starkey: 10 for identification and 11-A and B.

Mr. Carluccio: That cloth, 13, covered 10, 11-A and 11-B, is that right?

Mr. Starkey: That's right.

Q. How was the rag secured? A. By a piece of adhesive tape.

Q. Do you see the tape? A. Yes, sir.

Q. Now, what did you do with the package which was secured with tape at that time after it was given to you? A. When that was brought to my attention, I (1268) pulled the end of this cloth from the package and from the package I ripped a corner of it so that I could take a test of the contents.

Q. And did you take such a test? A. I did, sir.

Q. What kind of a test was it? A. We have a reagent, a marquis reagent.

Q. For what drug is that a test? A. For opium or its derivatives.

Q. Including heroin? A. Yes, sir.

Q. Do you know whether or not the marquis reagent reacts with cocaine? A. It didn't, sir.

Q. Do you know whether or not a marquis reagent does react with cocaine? A. It will not with cocaine.

Q. So from that you learned that the contents were not heroin, is that right? A. That's right, sir.

Mr. Starkey: May I have the Court's indulgence for one moment?

The Court: Yes.

(A pause.)

(1269)

Q. Now, what did you do with the rag covering the blue rag which you have before you, Government's Exhibit 13 for identification? A. That rag right there, sir?

Q. Yes. A. What did I do?

Q. Well, at the point of the testimony you have reached it was still taped and secured. A. Yes.

Q. What did you do then, did there come a time when you took it off? A. There did, sir.

Q. Did you tear the tape at all when you took it off? A. No, I just lifted the end of the tape. It wasn't ripped.

Q. Did there come a time——

Mr. Carluccio: I didn't hear that.

(Question and answer read.)

Q. And you took it off the package? A. Yes, sir.

Q. Now, did you see any tax stamps on the package or on this at that time? A. No, sir.

(1270)

Q. Now I show you Government's Exhibit 12 for identification, and ask you if you recognize that rag? A. I do, sir.

Q. Where and when have you seen that before? A. I saw it on this same day, May 6, back aft, in the after peak, which partially covered Mr. McNamara's seizure.

Q. And those were the five packages? A. Yes, sir.

Q. Which you have identified as Government's Exhibit 8 for identification? A. Yes, sir.

Q. Did you take custody of that rag also? A. I did, sir.

Q. Now, do you know whether or not these seizures were given numbers? A. The seizure is given numbers.

Q. Do you know what the numbers were that were given to these seizures? A. On these particular ones I don't know, but up in the upper right-hand corner on the tag on the seizure, the numbers come from the money and accounts division, they issue them.

(1271)

Q. Do you have any information with you? A. I have some information with me.

Q. Will you check that? A. If I may look at it, yes.

Q. You told me yesterday what the seizure number was, did you not, Inspector? A. Right.

Mr. Pogoda: I didn't know the witness was on the stand yesterday.

Mr. Starkey: No. I am talking about in my office.

The Witness: McNamara's number was 22155. Adams' was 22156.

Q. All right, sir. Did there come a time, then, when you saw tax stamps on either Government's Exhibit 8 or Government's Exhibit 19 for identification, in these containers? A. No, no tax stamps at all, sir.

Q. Did you see tax stamps on the outer covering, either rag, Government's Exhibits 13 and 12 for identification? A. No, sir.

Q. Now, did you maintain custody of the seven packages and the two rags which you have identified? (1272) A. Yes, sir.

Q. Did there come a time when you went to the duty captain with them? A. Yes, sir.

Q. In whose company? A. Mr. McNamara and Mr. Adams.

Q. And this was when? A. This was approximately four hours after the seizure.

Q. Where is the duty captain located? A. 54 Stone Street.

Q. And what did you do at that time? A. The captain wrapped them with cord and sealed them and put them in the safe.

Q. The packages and the covers? A. Right.

Q. That is to say the two rags and the containers themselves? A. Yes, sir.

Q. And were they in the same condition at that time as when you found them? A. They were, sir.

Q. Or when you received them, I should say. A. Yes.

(1273)

Q. With the exception of the fact that the rags had been taken off, is that right? A. That's right, sir.

Q. The tape was in the same condition as it was while it had been taped on? A. Yes, sir.

Mr. Carluccio: Objection. Two questions there and I move to strike the answer, the one about the tape and the other one about whether the rags were taken out. His first testimony was that both of them were in sealed objects, and I submit it's important to this case.

The Court: I overrule the objection. Perhaps you can clarify them on cross.

Q. And you saw the duty captain seal them at that time with Adams and McNamara present? A. That's right, sir.

Mr. Starkey: I have no further questions.

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(1278) • • •

HELEN GARBUTT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. What is your occupation, Miss Garbutt? A. I am a chemist at the Customs laboratory.

Q. How long have you been so employed? A. 18 years.

Q. Will you tell the Court and jury what your educational qualifications are for this position, Miss Garbutt? (1279) A. I have a Bachelor's degree from Bucknell University.

Q. From what university? A. Bucknell.

Q. Do you have any other post-graduate training or have you read any matter dealing with your subject since then? A. Yes. I studied many books on the subject.

The Court: How long have you been a chemist?
The Witness: 28 years.
The Court: Your degree was in chemistry?
The Witness: Yes.
The Court: I will accept it. Let's proceed.

Q. Are you familiar with the chemical properties of cocaine hydrochloride? A. Yes, I am.

Q. Have you ever tasted cocaine hydrochloride? A. Not exactly tasted it. I touched it to the tip of my tongue.

Q. What is the flavor, or what is— A. It's very bitter and it numbs the tongue.

Q. It numbs the tongue? A. Yes.

(1280)

Q. Are you familiar with whether or not it is soluble in water? A. The salts of cocaine are soluble.

Q. Does that include cocaine hydrochloride? A. Yes, it does.

Q. Can you tell the Court and jury what the effect on the appearance of water would be with the addition of a quantity of pure cocaine hydrochloride? A. It would dissolve forming a clear solution.

Q. Would it change the appearance of the water in any way? A. No.

Q. Now, were you working on May 7, 1958? A. I was working at the customs laboratory.

Q. Now I show you Government's Exhibit 10 and 8 for identification and ask if you recognize those exhibits. A. Yes. These appear to be the wrappings that were around samples of white powder that I received that day.

Q. Did you mark them in any way? A. Yes, my initials are on here.

Q. And that goes for each package? A. Yes. They are all initialled.

(1281)

Q. You received them from Officers McNamara and Adams? A. Yes, I did.

Q. Now, were they in that condition or did they have anything in them at the time? A. Yes. They had white powder in them.

Q. What did you do with the powder? A. I took it out and weighed it, and analyzed it and found that it was cocaine hydrochloride.

Q. What was the weight? A. The contents of this package weighed one pound, one ounce and 40 grains, and the total contents of these packages were two pounds seven ounces, 216 grains.

Q. For a total of approximately three pounds eight ounces and 156 grains? A. Yes.

Q. Now, after you removed the cocaine from these packages did there come a time when you returned the packages to Officers McNamara and Adams? A. Yes, I did.

Q. Now I also show you—and Miss Garbutt, I would impose upon you at this point to step off the witness stand for this examination because I don't (1282) want to handle these packages any more than necessary. I show you Government's Exhibits 9-A through E and ask you to examine them and ask you if you recognize them. A. These all have my initials on them. These are the bags in which I put the powder after I removed it from the taped packages.

Q. And I show you 11-A and 11-B for identification and ask you if you recognize them. A. These are the two packages that came out of that one largest taped package.

Q. This one marked Government's Exhibit 10 for identification? A. That's right.

Q. And did you return the whole group of exhibits, the outside packages and the paper bags containing the cocaine, to Adams and McNamara? A. Yes, I did.

Mr. Starkey: I offer, your Honor, Government's Exhibits 6, 7, 8, 9-A through E, 10, 11-A and B, 12, 13, for identification in evidence.

The Court: You are offering them in evidence?

Mr. Starkey: Yes.

Mr. Pogoda: If the Court please, the (1283) defendants respectfully object to the admission of these exhibits in evidence because there has been no connection shown between any of the exhibits here and any of the defendants and I speak especially for the defendant Anfield.

*Defendants' Objection to Admission of Certain Exhibits and Motion to Deny Admission*

The Court: Well, the Court overrules the objection and admits them in evidence on the basis of the conspiracy allegation in the complaint.

Mr. Pogoda: Do I understand, your Honor, that they don't apply to Counts 1 and 2 of the indictment?

The Court: Well, at the present time the Court is admitting them with reference to the conspiracy count in any event.

Mr. Carluccio: Your Honor, I object for other reasons, and the reasons are, I would rather not discuss them before the jury. It is a legal question at this point, your Honor.

The Court: Just go right ahead and state them.

Mr. Carluccio: All right, fine.

Well, my point is that these two exhibits, which were maintained by the Government and stated to be in one of the Government's stores all during the time (1284) from May, approximately May 15, up until the present time, I move that these exhibits not be admitted into evidence because they were not in the Government's stores with particular attention to Exhibit 13 in evidence, the reason being that a motion was made for discovery and inspection which was granted by Judge Dimock as a matter of record before the Court that—the order was signed by Judge Dimock on 11/7/58, November 7, 1958, and filed on November 10, 1958, your Honor and pursuant to that order I examined that blue cloth and I examined what the Government had told me was the packages involved in this case, and in my examination—it took place, according to the best notes in my diary, somewhere

in December of '58—and I maintain that this evidence was not in the care of the government during the time it was in the vault, as they maintain, but however, it was taken back and forth and therefore the predication and the foundation based upon the introduction is faulty and for that reason I move that that specific cloth, which is 13, shouldn't be admitted into evidence on the record and on my statement as to the inspection by myself.

The Court: The Court will accept your (1285) statement but the Court denies your motion and admits them. The witness has specifically identified those particular exhibits as being found in this shipment.

Let's proceed. Any further questions of this witness?

Mr. Starkey: Well, your Honor, may I just state for the record that the witness Garbutt specifically stated that these cloths weren't in the packages which she identified and since this application was made before the jury——

The Court: The only question was whether or not these exhibits were taken off the ship and several witnesses have looked at these and said that these were easily identifiable and were specifically the ones that were found, so with reference to the cloths, we have no question of custody really. The only question of custody which is where you have identifiable material, and that is particularly in connection with the powder materials that are homogenous and can't be identified.

Any further questions?

*Denial of Motion to Deny Admission*

Mr. Carluccio: Just again for the record, and on the other question of the packages, I submit that also with the custody, that there is a break in the (1286) chain because of the testimony of Mr. Bartlett which was that he gave them to Mr. Conroy, and yesterday we had Mr. O'Connell saying that he stored them in his vault.

Mr. Starkey: Your Honor, since this is in front of the jury I object to a characterization of the testimony. Those witnesses testified that they gave it to the duty captain, the next day they brought it to the chemist and after leaving the chemist they then gave it to the deputy collector O'Connell. The chain is a perfect one.

The Court: I will deny the motion. Let's proceed.

Mr. Somers: Your Honor, I object to the introduction of the bags in evidence and the material offered by Mr. Starkey at this time as against my client Aiken, because there is absolutely no testimony on the first day of the case linking my client with any of the people associated with it. The testimony, so far as Aiken is concerned is that he had some dealings through school boy in narcotics, not these particular nartcotics, concerning—and there is no proof here that the narcotics that may have been the subject matter of these alleged deals were—with (1287) school boy were in fact the narcotics that all of these people participated in bringing in, and for that reason I submit as against Aiken this shouldn't be admissible.

The Court: I will deny the motion. I am permitting them on the conspiracy count.

*Motion by Defendant Massiah to Deny Admission—Denied*

*Mario Cozzi—for Government—Direct*

Mr. Archer: I move at this time, your Honor that the packages of narcotics are not admissible as against the defendant Thorn. Nowhere in all the testimony that has been adduced here in court is there any connection that this defendant Thorn was with the seaman, or that the defendant Thorn had anything to do with the conspiracy or anything to do with the narcotics. There was some testimony that he uses the stuff by Sylvia Ferris, but other than that there is no connection with the defendant Thorn.

The Court: That is denied. I will admit it under the conspiracy count.

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(1302) * * *

Mario Cozzi, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. What is your occupation, Mr. Cozzi? A. I am a customs agent employed by the Bureau of Customs, Treasury Department.

Q. How long have you been so employed? A. As a customs agent, since 1953.

Q. Now, Agent Cozzi, were you on duty on May 6 of 1958? A. Yes, sir.

Q. Did there come a time on that date when you boarded

the S/S Santa Maria at Pier 57, North River? A. Yes, sir.

Q. Where did you go after you boarded the ship? (1303) A. I went up to the vicinity of a mess hall that was set up as a searching squad headquarters and met several customs officers there, and I also spoke to them about what went on aboard the ship.

Q. Now I show you Government's Exhibit 27 for identification and ask you if you recognize that item. A. Yes, sir.

Q. Where and when had you seen it before? A. I found that in a locker on board the S/S Santa Maria on the evening of May 6, 1958.

Q. Do you know whose locker it was? A. Yes, sir. Winston Massiah, a seaman employed aboard that vessel.

Q. Did you have a conversation with Massiah about that tape? A. Yes, sir.

Q. What did he say and what did you say? A. After I found this tape I talked to Winston Massiah and I asked him if this was his tape. He stated that it was his tape.

I asked him what he used it for. He said—first I asked him where did he get it. He said he bought it in South America.

(1304)

And then I asked him "What did you use it for?" He said, "I sprained my left wrist."

Then I asked him, "Isn't it true that you used this to secure the package of cocaine that were seized up here today?"

And he didn't make any reply to that last question.

Q. Now, did you examine the tape, Agent Cozzi? A. Yes, sir.

Q. What did you ultimately do with the tape? Did you retain it in your custody or did you give it to someone else? A. First of all, I scratched my initials into this side of it, "M.C. 5/6/58," and I showed Murphy it on the ship and then I turned it over to my office at 201 Varick Street, New York, New York.

Q. And when you turned it over to him was it in the same condition that you found it? A. Yes, sir.

Q. Will you open the tape up, Agent Cozzi, and will you tell us now, the tape inside is in the same condition, at least the end of the tape inside is in the same condition as when you found it? A. To the best of my recollection and belief, (1305) that appears to be in the same condition with the——

Q. All right, sir— A. Incidentally, I also initialled the inside of it, too. I forgot to mention that.

Q. I show you Government's Exhibit 28 for identification— A. Excuse me. This wasn't cut out when I found it. You asked me if it was in the same condition. These cut-outs—when I found the tape it was solid.

Q. Those patches weren't cut out at the time? A. These patches weren't in it when I found it.

Q. The end, though, is what I asked you about specifically. A. Okay.

Q. And that is in the same condition? A. Yes, the end appears to be in the same condition.

Mr. Starkey: I offer Government's Exhibit 28 for identification in evidence.

Q. And I show you Government's Exhibit 28 and ask you if you recognize those documents.

Mr. Carluccio: Your Honor, before we get to 28 may I question the witness——

(1306)

The Court: I won't rule on the offer until you have had a chance to examine it.

Mr. Carluccio: All right.

A. Yes, sir. These are documents that were brought in by a girl named Elita Lloyd, asking to have some baggage that was detained.

Q. Both documents? A. No. One is a customs document and one is a letter, a note. I will read it:

"To whom it may concern:

"Please deliver to Miss Elita Lloyd two bags, i.e., one suit case, one handbag, one blanket. Contained in either suitcase should be articles declared by me before the ship arrived in New York."

And it is signed by Winston Massiah.

Q. Do you recognize the signature and his writing? A. Well, I accepted it as his writing.

Q. Now I ask you to look at the next document and ask you if you recognize that. A. Yes, sir. This is a memorandum receipt that is used here by the Bureau of Customs in New York locally, and it's titled, "Memorandum of Valuables (1307) Shipped," and it's made out for the payment of $7.09 covering customs declaration No. 35760, re Winston Massiah, and I believe it is 1914 East 128th Street, New York City, for the S/S Santa Maria, arrival of 5/6/58.

Q. And the document you have before you is a copy of a receipt you made at that time? A. Yes, sir. It is in my

handwriting, and it's stamped "Paid" by the customs cashier.

Q. Was that document prepared in the regular course of business? A. Yes, sir.

Q. Was it the regular course of business on or about the time of the date thereon for that receipt to be prepared? A. Yes, sir. When you say the regular course of business, the regular course of business on a transaction such as this would be that duty would be collected on the pier on the day of arrival or the day after, whenever the seaman would come out and clear his curios. This is in line with the regular order of business with the exception that his baggage and all his effects were removed and that he was arrested on the vessel and taken to our office for further investi- (1308) gation.

Q. Well, that is to say, it was prepared in the regular course of the operations of the customs bureau? A. Yes, sir.

Q. Who prepared that receipt? A. I made out the receipt but a custom inspector examined and assessed the duty on the articles that were passed and released to the bearer that presented this note.

Q. Well— A. And I was there when this was taking place.

Q. Was there another document there at that time? A. Yes. There was a customs crew declaration. I believe it is customs form 5129.

Q. Did you see that document? A. Yes, sir.

Q. And it was—was there any connection between that receipt and the crew man's declaration? A. Yes, sir. I noted that the number of the customs crew declaration up here in the upper left-hand corner, No. 35760 and then I wrote "Re Winston Massiah, 19 East 128 Street, New York City."

Q. And it was the items listed on that crew (1309) man's declaration that this receipt was prepared for the payment of the duty? A. That's right. Here is the set-up. This receipt accompanies that declaration and it goes down to the cashier's office in the custom house where they put another number on it. And this is a receipt that we kept to show that the money that was collected from this person for this declaration in our office—in other words, there was some sort of a tangible receipt that we had to show that was cleared.

Mr. Starkey: All right, sir. I will offer this in evidence.

Q. When you issued this receipt did you receive payment at that time for duty on three pounds or more of cocaine? A. No, sir.

Mr. Starkey: No further questions.

Cross examination by Mr. Carluccio:

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(1330) • • •

Q. Then what else did you ask him with reference to the tape? A. I asked him where he bought it. He said "I bought it in South America."

I said, "What did you buy it for?"

He said, "I sprained my left wrist." And he didn't have any tape on his left wrist.

I says, "If you sprained your left wrist how come you don't have any on?". So then I said, "What are you kidding me? This is what you used to wrap the cocaine in."

Q. And he denied it? A. He didn't answer.

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(1350) • • •

FRANCIS R. LOGAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. What is your occupation? A. I am a textile technologist.

Q. How long have you been so employed? A. 30 years.

Q. Who is your employer? A. The U. S. Customs Laboratories.

Q. What do your duties entail? A. Analyzing various textiles that are imported and sent up by the examiners to be analyzed in order to aid them in putting the proper duty on said textiles.

Q. What is your educational background for this position, sir? A. I have a B.S. Degree in textile engineering.

Q. From what school? A. Clemson College, South Carolina.

(1351)

Q. Now I show you Government's Exhibit 27 for identification—rather, Government's Exhibit 27 in evidence, and ask you if you recognize that roll of tape. A. Yes.

Q. Where and when have you seen it before? A. Well, it was brought to the laboratory on May 12 of 1958.

Q. That was by Agent Murphy? A. By Agent Murphy, yes.

Mr. Carlucció: Your Honor, at this point I wish to question the United States Attorney, that he should bring out further qualifications of this gentleman to examine tape and examine for this purpose, his statement on that voir dire or the

qualification was he examines and analyzes for the purpose of customs. I don't know if the analysis of the tape was proper.

The Court: Suppose we wait until we get the question and then proceed.

Mr. Carluccio: Surely.

Q. Incidentally, how many of these analyses do you make a month, on the average, Mr. Logan? A. You mean——

Q. Analyses of textiles. (1352) A. Oh, textiles?

Q. Yes. A. I would say 40 or 50, maybe, a month.

Q. All right, sir, now I show you Government's Exhibit 13 and ask you if you recognize that cloth and the tape thereon. A. Yes, I do.

Q. Where and when have you seen that before? A. At the same time the role of tape was shown to me.

Q. And Agent Murphy also delivered that? A. Yes.

Q. Now, after you received the roll of tape and the rag with the tape thereon, what did you do with them? A. Well, the first thing we did was to take a piece of the tape, I believe—it doesn't make much difference—and we cut a piece from it, and we took a piece from the tape and treated them in the same manner.

The Court: Wait a minute, now. You took a piece of tape from the roll, is that right, and then a piece of tape from the blue cloth in front of you?

A. No, the attached tape, took it from the (1353) attached tape.

The Court: The tape that was attached to the cloth?

The Witness: Yes.

The Court: All right, sir.

Q. Did there come a time when you compared the end of the tape on the roll with the tape on the blue cloth? A. Yes.

Q. When did you do that? A. Well, in the course of looking it over and so on I noticed that it was——

The Court: Wait just a minute. Don't say what you noticed. You did make a comparison?

The Witness: Yes, we did.

The Court: All right.

Mr. Starkey: I ask that this document be marked for identification.

(Government's Exhibit 30 marked for identification.)

Q. I show you Government's Exhibit 30 for identification and ask you if you recognize that picture. A. Yes, I do.

Q. Is that a fair representation of the condition (1354) of the tape on the roll and the tape on the cloth at the time of their delivery to you? A. Yes.

Mr. Carluccio: Objection, your Honor. It is leading.

The Court: Overruled.

Mr. Starkey: I will offer Government's Exhibit 30 for identification in evidence.

Q. Had you made any cuts or any changes in the condition at the time this picture was taken? A. Well, I had taken a cut out of the roll of tape.

Q. The square one in the middle? A. Yes.

Q. Had you touched the end at all? A. It wasn't anywhere near the end, yes.

Q. And that is all you had done? A. Yes, on the roll, and I cut some out of the tape attached to the blue cloth, the blue rag.

Q. Well, where had you cut from the blue rag? Had it been from the edge which fits into——

Mr. Carluccio: Your Honor, I think he should refer to the exhibits. We won't have any record of "this".

(1355)

The Court: Just a minute, please. Show the piece of tape that you didn't cut that is attached to the cloth.

The Witness: Here.

The Court: The one you have in your hand is the part that you didn't cut.

The Witness: Well, this was not too large a piece as I remember, so we cut a piece here.

Q. Was it a straight cut? A. It wasn't cut with a die like this was. It was such a piece that we wanted to get a representative sample so I cut it with a razor blade to get it out of there and then trimmed it off with a pair of scissors.

Mr. Carluccio: For the record, Mr. Starkey, he is referring to a piece of tape stapled to the blue cloth Exhibit 13, and it's the smallest of the two pieces of tape.

The Court: That's right. Let's proceed.

Mr. Starkey: I offer Government's Exhibit 30 for identification in evidence.

The Court: Proceed with the examination.

Q. Now, did you measure the width of the tape on the cloth and on the roll? (1356) A. Yes.

Q. What was the width? A. Three inches.

Q. Of each? A. Yes, the roll and the tape on the cloth.

Q. Did you make any further examinations or any further examinations besides measurement of the tape on each? A. Yes.

Q. What examinations did you make? A. With the piece—well, I will take the roll first, I took a piece there, and we cleaned it up, in other words, extracted with solvent and took the adhesive off that leaving just the cloth, and then the cloth was analyzed.

We counted the number of warp threads per inch, and the filling picks per inch——

Q. And what were the numbers of each? A. And then —well, I will finish by saying that then I took a piece from the tape that was stuck to the cloth and analyzed it also, cleaning up the adhesive, cleaning the adhesive off, and then taking the cotton cloth that was left and treating it the same way, counting the threads in the warp and the filling (1357) threads in the threads in the filling.

Q. And what were they? What were the numbers? A. There were 82 threads per inch in the warp and—do you mind if I refer to my notes?

The Court: Go ahead.

A. 82 warp threads per inch, and 76 filling threads per inch, and then having taken those yarns apart it was then easy to figure the yarn size of these two different yarns.

Q. What were they? A. The warp yarn size was 32 singles. That means a single yarn, not a two-ply. And

the filling yarn size was 44 singles. In both cases the figures were the same. The tape from the roll and the tape from the cloth, that was stuck to the cloth.

And I might add that they both weighed three ounces per square yard.

Q. They weighed the same also? A. The cloth would be three ounces per square yard.

Q. And this was true of both the tape on the roll and the tape on the cloth? A. Yes.

Q. Now, after this examination did you reach (1358) any conclusion as to whether or not the tape on the cloth was off the roll?

Mr. Carluccio: Objection, your Honor. I don't believe that he has been properly qualified as an expert on the matching of tape. Again——

The Court: You may examine him on the voir dire. The Court will accept him unless you can show that he is not qualified. Apparently he is qualified.

By Mr. Carluccio:

Q. Sir, Mr. Logan, during the regular course of your business and work with the government your analysis is mainly for the purpose of determining duty on specific items? A. Yes, I would say so.

Q. And how often do you have to make an examination to determine whether one piece of tape or one piece of tape came off a specific roll? A. Well, we never have that.

Q. You never did that before until this time? A. No.

Q. You mean this is the first time that you ever had to determine whether a piece of specific cloth or tape

came off another piece of specific cloth or tape? (1359) A. No, not adhesive tape but we have had cloths that had heavy sizing and various substances on them that we had to clean off before we could get down to the base of the cloth so it is something similar to that, but I never had tape, I never had adhesive tape before.

Q. With cloth rather than adhesive tape how many times did you so analyze pieces for specific— A. I didn't hear that question.

Q. You said it other times, you had to make analyses other times not for tape but for cloth. How many times? A. Oh, that is quite frequently. The use of resins and the various finishes they put on cloths now is quite——

Q. To match up one piece with another? A. Oh, no, not that.

Q. How many times would you have to match up one piece of cloth with another specific piece of cloth? A. About the only thing that would come into that would be the analysis as I pointed out, about putting the threads per inch, ounces per square yard, and in that way you analyze two samples a lot of times and they (1360) match up in that respect.

Q. But other than this time, today, you never had to match up one specific cloth or tape with another specific cloth or tape and give an opinion as to whether they came from the same bolt or the same roll? A. No, I think not.

Mr. Carluccio: I move that his testimony be stricken because he is not qualified. He never did it before in his life, your Honor.

The Court: Is it your testimony that you never examined a piece of cloth as against another piece

of cloth to see whether or not the two pieces of cloth came from the same bolt or the same supply?

A. No, we wouldn't get a request like that.

The Court: What type thing do you do, sir?

A. Well, the examiner that handles various textiles sends them up to us to be analyzed, and the main thing that they want in a cotton cloth, as this turned out to be the base cloth, is that average yarn size and the same length, and if it's a cloth how it is woven. And we give him the answer, and then he can determine the rate of duty. But I don't think I have ever had to compare, as in this case, a piece of cloth with another piece of cloth for customs purposes.

(1361)

The Court: Well, has it ever been your business to reach conclusions as to whether or not one piece of cloth are the same?

The Witness: That just doesn't come up at all.

The Court: You don't do this?

The Witness: No.

The Court: As I understand it, what you do do, though, is you take a piece of cloth and you examine it to see how many threads in the warp and how many threads in the woof, and then you see what kind of a yarn it is and so on?

The Witness: Yes, you determine the average yarn size and that is the way the duty is put on.

The Court: As I understand your testimony,

you took the adhesive off of the cloth part of the tape.

The Witness: Chemically, yes.

The Court: That was a sample that was taken from can and the sample of tape that was taken from the blue cloth, and you counted——

The Witness: The sample of tape taken from the blue cloth.

Q. Yes, and you counted the threads in each (1362) and you weighed the yarns in each? A. Yes. We had to weigh the separate yarns in order to get the yarn size.

The Court: And my understanding of your testimony is that you found the number of threads both ways were the same in each.

The Witness: That's right.

The Court: And the weight of the yarn is the same?

The Witness: The weight of the cloth was the same.

The Court: Is that your testimony?

The Witness: Yes.

The Court: And that is all it is, I guess.

The Witness: Yes.

The Court: All right.

By Mr. Starkey:

Q. And the width was the same? A. Yes.

The Court: Yes.

Q. Now I show you Government's Exhibit 30 for identification——

Mr. Carluccio: Your Honor, have you ruled on the admissibility of this yet?

(1363)

Mr. Starkey: It is still for identification.

The Court: I haven't ruled on it yet.

Q. And I ask you with specific reference to these edges which I am pointing out, did you tamper with those in any way? A. No, sir.

Mr. Carluccio: What is he pointing to?

A. Do you mean the cuts?

Q. I will ask that question again. With reference to these jagged edges to which I am pointing, did you tamper with those in any way? A. Oh, no.

Mr. Pogoda: If the Court please, I object to the form of the question. I think the witness should be asked not what he did not do, but what he did and ask whether he did that.

The Court: To get to the point, get the end of the tape from the can and get the end of the tape from the blue denim cloth and see if they match. Let's get it over with. We will fool around with it for an hour.

Mr. Starkey: All right, your Honor.

The Court: Don't do that with him. Anybody can see if it matches. You don't have to be a genius (1364) to do that.

Mr. Starkey: I think the picture will facilitate the examination and I would like to have the witness testify, which he has done, that as far as the points with which we are concerned in this photograph, he didn't touch those in getting his samples.

The Witness: Certainly not.

The Court: Haven't you got the two exhibits right there before you?

Mr. Starkey: I do, your Honor.

The Court: Why don't you put them together and see if they match.

Mr. Starkey: All right, your Honor.

The Court: Put it there on the jury rail.

Mr. Pogoda: May I at this time object to Mr. Starkey exhibiting the photograph in the presence of the jury when it is not in evidence.

The Court: I don't think he was exhibiting it, sir, and let the record show that he wasn't exhibiting it.

The Witness: It's kind of dried up now.

Mr. Carluccio: Let the record show that——

Mr. Starkey: Your Honor, I object to the comments of counsel.

(1365)

Mr. Carluccio: Your Honor, he is showing something to the jury and I would like the record to show that there is nothing on the record to show what he is matching up, your Honor. I just wanted to say let the record show that counsel is trying to match up the end of the tape which is in one exhibit in evidence with the larger piece of tape which is on Exhibit 13 and that was what counsel did.

The Court: All right, sir.

Mr. Carluccio: And now let the record show that counsel is making up the end of the tape on the roll with the smallest piece of tape that is on 13.

*Motion by Government for Admission of Exhibit 30 in Evidence*

The Court: All right, sir. Let's proceed. Are you all finished with the experiments?

Mr. Starkey: Yes, your Honor. I offer Government's Exhibit 30 for identification in evidence.

Mr. Carluccio: Objection. The best evidence is the tape, not the picture.

The Court: I sustain the objection. Are you all finished with the witness?

Mr. Starkey: Yes, your Honor, I am finished. I am finished with this witness, but I would respectfully request to be heard on the question of the photograph, your Honor.

(1366)

The Court: Go ahead.

Mr. Starkey: On that question the witness has testified that this is a fair representation of the condition of these ends of the tape.

Mr. Carluccio: Your Honor, I object. He is showing it to the jury again, your Honor.

The Court: Just a minute, please. He hasn't shown it to the jury.

Mr. Starkey: In this situation, your Honor, since the tape is old and to some extent wrinkled, at this time I think that Government's Exhibit 30 for identification marked in evidence would be of considerable help to the jury in making the determination of the fact question here. I think a proper foundation has been laid for the admission of the photograph and I think that the photograph which I will submit to the Court shows far better than a present——

Mr. Pogoda: I object to any statements of what the photograph shows is not in evidence. I feel

*Motion for Mistrial*

*Denial of Motion for Mistrial and Denial of Motion by Government for Admission of Exhibit 30 in Evidence*

Mr. Starkey has transcended the bounds of fair play and I move for a mistrial.

The Court: I deny the motion and I also deny the motion of the government to put this photograph in evidence.

(1367)

Any further cross-examinations?

Mr. Carluccio: One question.

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(1385) • • •

FINBARR J. MURPHY, called as a witness on behalf of the government, being first duly sworn, testified as follows:

Direct examination by Mr. Starkey:

Q. What is your occupation, sir? A. I am a customs agent with the Treasury Department, Bureau of Customs.

Q. How long have you been so employed? A. Approximately four years.

Q. Are you the agent in charge of the investigation of this case? A. I am.

Q. Were you on duty on May 6th of 1958? A. I was.

Q. Did there come a time on that date when you boarded a Grace Line vessel by the name of the Santa Maria? A. Yes, sir, at approximately 2.30 p.m. on May 6, 1958.

Q. Will you tell the Court and jury what you did (1386) and what you observed thereafter?

Mr. Carluccio: Objection, your Honor. If it is to be in narrative form, I don't think it is proper at this time. I think it should be in question-and-answer form.

The Court: I will overrule the objection. It might be quicker this way.

A. On May 6th, at that approximate time, 2.30, I boarded the Santa Maria, and I went to the room of the defendant Massiah. At that particular time I was accompanied by, I believe, two customs searchers. During this time we conducted a search of the defendant Massiah's quarters, bunk and his person. We looked for the false bottom of lockers; we searched under the locker, and there was a false bottom under the locker, took out some screws. I was watching the searchers go through the shelves in his locker, and——

Mr. Carluccio: Did he say there was or there was not a false bottom? I didn't get that.

The Witness: There was.

Mr. Carluccio: There was?

The Witness: Yes. All these lockers have false bottoms. They are built about four inches off the ground.

Q. I show you Government's Exhibit 27 and ask (1387) you if you recognize that roll of tape. A. Yes; I do.

Q. When did you first see that roll of tape? A. I first saw this roll of tape approximately 3 o'clock. I observed it in the locker of the defendant Massiah. During the search I personally opened that myself, as there is a compartment within that tape, and I observed its ragged

edge, and at that particular time it didn't mean anything to me, so I put it back, and I instructed the searchers to continue their work.

Q. What happened thereafter? A. Oh, approximately 3.30 I was informed that a seizure had been made, and it was apparently cocaine.

Mr. Pogoda: I move to strike out what he was informed as to what it was, as being purely hearsay.

The Court: I grant your motion and instruct the jury to disregard the witness' statement as to what he thought it was.

Q. Did there come a time at about 3.30 when you had a conversation with some other customs officers? A. Yes.

Q. What did you do after that conversation? A. After that conversation I was interviewing the defendant Massiah in the headquarters established (1388) aboard the ship.

Q. Who else was present at that time? A. I believe it was Agent McVeigh and myself.

Q. Did there come a time when Agent Cozzi interviewed the defendant in your presence? A. Yes.

Q. When did that take place and where? A. That took place approximately 7.30, I believe.

Q. Will you state what was said at that time by Agent Cozzi and the defendant. A. Agent Cozzi came into the room with this roll of tape here, and he asked the defendant Massiah, did he own the tape, to which defendant Massiah stated that he did and that he had bought it in a South American port.

I, too, asked him, and he told me he had bought it in Callao. He stated that he had hurt his left arm, and it was for that reason that he had the tape.

Q. Now, did there come a time thereafter when you placed the defendant Massiah under arrest? A. Yes. Soon after his stating that he owned the tape, he was placed under arrest.

Mr. Starkey. I ask that this document be marked for identification as Government's Exhibit 32.

(Marked Government's Exhibit 32 for identification.)

(1389)

Q. I show you Government's Exhibit 32 for identification and ask you if you recognize that document. A. Yes. This is a——

The Court: Wait. You do recognize it?
The Witness: Yes, sir.

Q. Where and when have you seen it before, and when did you first see it? A. I came into possession of this document here—it is a National Maritime Union membership book.

Mr. Pogoda: I will object to the witness reading from anything that is not in evidence.
The Court: Don't read from it. Just answer, when did you come into possession of it and how?

A. (Continuing) On May 6, 1958, I took this from the person of the defendant Massiah.
Q. At the time of his arrest? A. That is correct.

Mr. Starkey: I offer Government's Exhibit 32 for identification in evidence.

Mr. Carluccio: For the enclosures that are in there now in the union book when you got it?

The Witness: I believe so.

Mr. Carluccio: Well, do you know?

The Witness: Well, that book has been in the custody of the United States attorney here, and that (1390) is just the way I brought it over, and I would state that it was.

Mr. Carluccio: With all these enclosures?

The Witness: Yes.

Mr. Carluccio: And the photograph?

The Witness: I believe so.

Mr. Carluccio: No objection.

(Government's Exhibit 32 for identification received in evidence.)

By Mr. Starkey:

Q. Agent Murphy, I will ask you to read to the jury from Exhibit 32 the matter contained therein relating to one Renie. A. On page 13 of this document there is a notation in green ink spelled "Renie", and the number is 6085.

Q. I ask you also to read the telephone number on Government's Exhibit 1, the telephone toll slip on Jesse Colson's telephone. A. This document shows "Valparaiso, Chile, 6085, Renie Huasaff."

Q. Agent Murphy, I show you Government's Exhibits 4, 5 and 3 and ask you if you know the identity of the people in those pictures. A. Yes; I do.

Q. Will you tell the Court and jury who they are?

(1391)

Mr. Pogoda: I object. Just a moment. I think a foundation has not been laid so this witness can explain how he knows it.

The Court: I think you better lay a proper foundation.

Mr. Starkey: Your Honor, I have laid as much foundation as I am capable of. If the defense objects to the agent's statement of knowledge of the identification of these individuals, why, then I will have to defer to the Court's ruling in that regard.

By the Court:

Q. Will you state whether or not you have ever seen these people in person? A. No; I have not.

Q. Your basis of saying that you can identify these people is that they were identified by the photographs, is that these photographs were identified by someone for you? A. That's correct.

The Court: I will sustain the objection.

Mr. Starkey: All right, your Honor.

By Mr. Starkey:

Q. I show you Government's Exhibit 26 for identification and 25 for identification and ask you (1392) if you recognize those exhibits for identification? A. I do.

Q. Where and when have you seen them before? A. That exhibit there was left on my desk.

Q. Which exhibit? A. This one right here, this box and the decks on the top of the box.

Q. You say the box, Government's Exhibit 26 for identification, was left on your desk? A. Yes.

Q. Do you know who left it there?

Mr. Pogoda: Objected to, if the Court please, unless the witness was present.

The Court: Did you see it left?

The Witness: No. I instructed them to leave it there. I was in court at the time.

The Court: And then, when you came back to your desk, it was there?

The Witness: That's correct.

The Court: All right. Proceed.

Q. And where was Government's Exhibit 25 for identification at the time? A. That was in the box.

Q. And you took it out of the box? (1393) A. I took it out of the box.

Mr. Starkey: Your Honor, at this time I will offer Government's Exhibit 25 for identification in evidence. In light of the Court's ruling that it was necessary to bring the custodian in, the custodian testified that he released it to Mr. Gow. I think Agent Murphy's testimony completes the chain, and I will now offer the declarations.

Mr. Carluccio: I didn't hear any date as to when it was offered and when it was put on his desk.

The Court: Do you have a date, sir?

The Witness: I think it was Tuesday or Wednesday of last week.

Mr. Carluccio: Do you know the date of Tuesday or Wednesday of the last week?

The Witness: Well, today is the 26th. That would be about the 19th or thereabouts.

Mr. Carluccio: You did not see anyone put it on your desk?

The Witness: No.

Mr. Carluccio: Your Honor, I object to these. There is no declaration of Winston Massiah in the declarations.

The Court: I will overrule the objection. They will be admitted.

(1394)

(Government's Exhibit 25 for identification received in evidence.)

By Mr. Starkey:

Q. Do you know where the declaration of the defendant Winston Massiah, also a crewman on this ship, is at this time? A. No; I don't.

Q. Have you ever had it in your possession? A. I have had it in my possession, yes.

Q. And what did you do with it? A. It came into my possession. I ordered it from the record center at the time Elita Lloyd came to me with a note from Winston Massiah, a "To whom it may concern" note, requesting that I turn over some personal effects and some articles that were supposed to be declared. That is the time I had it in my possession. And Agent Cozzi was with me, and he filled in the required form, the required cashier form, for duty purposes. And Elita Lloyd received defendant Massiah's personal effects and paid duty in the amount of $7.09, I believe. We had to have that dec to make notations as to what he declared.

Q. All right. What happened to it after that? A. I believe I sent it back to the record center again, as I had no more use for it. What happened to it after that I don't know.

(1395)

Q. Do you know whether or not the document is still charged to you as a record? A. Yes. I am informed that it is charged to me as a record.

Q. So that you are on record as charged with the document, but you do not know where it is? A. I do not know where it is. I called for that record, and it was sent up. That is the way they usually charge it.

Q. Did you throw the document away to spoil evidence? A. No.

Q. Did you destroy it? A. I did not.

Q. As far as you know, it has merely been misplaced? A. That is what I believe. It is misplaced some place.

Q. Now, you say you did see the document? A. I definitely did, yes.

Q. Was there any cocaine manifested or declared on that document? A. No; there was not.

Q. Now, I show you Government's Exhibits 13 and 12 in evidence and ask you if you recognize those records. (1396) A. I do.

Q. Now where and when have you seen them before? A. I received those on May 7.

Q. Where? A. Up at the Customs lab, just before the contents of these rags were turned over to the chemist.

Q. And did you keep them in your custody thereafter? A. They have been in my custody continually, except that I brought them over to U.S. Attorney Callandra, I believe, for viewing by the defendant and his counsel, the defendant Massiah.

Q. And otherwise you maintained them in your custody? A. Also on May 15, I believe, I turned them over to Chemist Logan for a comparison of the edge of the tape against the edge of the tape on the roll.

Q. Have you done anything to alter their condition yourself? A. No; I have not.

Q. Do you know when the defendant Thorn was arrested, Agent Murphy? A. No, sir.

Q. Or when he was taken into custody? (1397) A. Defendant Thorn—February 24, I believe, 1961.

Q. Where did you first see him on that date? A. I saw him in this building. I believe it was in your office.

Q. Do you recall whether or not he was questioned at that time? A. He was.

Q. Do you recall who was present at the questioning? A. Besides myself, there was a stenographer, Min Weiner, and yourself, and the defendant Thorn's lawyer.

Q. That was Mr. Archer? A. That's correct.

Q. Do you recall whether or not anyone else was present? A. Yes. I think there was a woman present, a sister-in-law or a sister.

Q. Of the defendant Thorn? A. Yes. Of the defendant Thorn.

Q. Do you see Thorn in the courtroom? A. I do.

Q. Will you point him out, please. (1398) A. He is the defendant furthest on the right.

Q. Do you see the defendant Massiah in the courtroom? A. Massiah is the defendant furthest on the left.

Q. Agent Murphy, did there come a time when you saw the defendant Massiah and the defendant Colson together? A. Yes; there did.

Q. When was that, sir? A. That was on November 19th, 1959.

Q. And where did this meeting occur? A. The meeting occurred on West 146th Street, between Seventh and Eighth avenues at approximately 9.30 p.m. in the evening.

Q. And were they on the street? A. No. This meeting took place in a car operated by Jesse Colson in 1958—a 1958 Chrysler Imperial.

Q. Were you able to overhear what was said? A. Yes; I was.

Q. By what means? A. Prior to this meeting, with the agreement of Jesse Colson, I had placed a Schmidt portable transmitter under the front seat of that vehicle. This device enabled me to pick up the conversation as I am sitting (1399) in another car.

Q. Will you tell the jury what you heard Colson and what you heard Massiah say at this time.

Mr. Carluccio: Your Honor, I seriously object to this evidence and feel that it is illegally and improperly obtained and constitutes a violation of the constitutional rights of my client. It comes under the category of eavesdropping, tape recording, wiretapping. Also I submit that, being that it was placed under the seat, the back seat, as he states, and I believe at the request of the government, with the cooperation of Jesse Colson——

May I ask this question:

Did Jesse Colson cooperate in helping you to place this transmitter behind the seat of the car, Mr. Murphy?

The Witness: Yes; he did.

Mr. Carluccio: —with his cooperation, wherein Jesse Colson was acting as an agent for the government, that this also constitutes entrapment, and

this evidence is illegal and inadmissible, and it should not be admitted at any time in this trial.

Mr. Pogoda: I further object that unless this witness can testify he observed the two of them (1400) and only the two of them in the automobile, the conversation cannot be identifiable unless this witness is prepared to swear that he knows the voices of both people and knew the voices of both people at the time the alleged recording or transmitting or transmission was made.

The Court: Are you prepared to have the witness testify that he recognized the voices?

Mr. Starkey: Yes, your Honor. He previously testified that he talked to Massiah on May 6.

By Mr. Starkey:

Q. Did you recognize his voice on this occasion in November?

Mr. Pogoda: If the Court please, the conversation with Massiah was on May 6th of 1958. There was one conversation. And here we have a conversation on November 19, 1959, a year and a half later. I submit that the one conversation is insufficient as the basis for the recognition of a transmitted telephone voice, and I object to any such response to the question asked by Mr. Starkey.

The Court: Is that the only time you heard the voice of Massiah prior to this recording?

The Witness: No.

(1401)

The Court: This really was not a recording, was it?

*Finbarr J. Murphy—for Government—By the Court*

The Witness: No. It was transmitted through the air.

The Court: It was a transmission?

The Witness: Yes.

The Court: Received simultaneously by you by radio, I guess?

The Witness: I have earphones to pick it up.

A. (Continuing) Subsequent to the arrest of Massiah, I believe I spoke to him in the Federal House of Detention.

Q. Have you spoken to Massiah since then? A. Yes. I have spoken to Massiah in your office, in November of 1960. I spoke to Massiah—I had a conversation with him in the office of Callandra, I believe, when he came up to look at these particular exhibits here.

Q. Do you have any doubt that the voice you heard over the Schmidt device was Massiah's voice? A. No doubt at all, my reasons being that I had been speaking with Jesse Colson.

The Court: Wait just a minute, please.

The question before the Court now is whether or not you recognized this voice, which was coming over, as (1402) the voice of Massiah. We are not interested in what anybody told you about it. We are interested in finding out whether or not you recognized Massiah's voice.

The Witness: Yes. I recognized it.

Q. Could you also view the conversation as it took place? A. I could.

The Court: You were looking at these people at the same time?

The Witness: Oh, yes, sure.

The Court: You were looking——

The Witness: I had them under observation visually and electronically.

The Court: I see. And you could see that there were only two people in the car?

The Witness: There were only two people: the driver and the defendant Massiah.

The Court: And you were familiar with Colson's voice?

The Witness: Oh, yes, quite familiar.

The Court: You had been talking to him daily for weeks, I assume?

The Witness: Months would be more like it.

The Court: Months?

The Witness: Yes.

(1403)

The Court: And did you recognize Massiah in the car physically by seeing him?

The Witness: I recognized him just opening the door, and when he got inside I recognized him also.

The Court: In other words, you recognized him as the defendant, and as the other person in the conversation with Colson?

The Witness: I did, sir.

The Court: What was the date of this conversation?

The Witness: November 19, 1959.

The Court: And this was after Colson's arrest?

The Witness: Yes. Colson was arrested in July, 1959.

Mr. Carluccio: Your Honor, if the Court please, I also wish to make known to the Court one other

reason for my objection, and that is the best evidence rule. I feel that if this is a conversation between Colson and Massiah, and Colson was present at the conversation, that Colson should be brought in to testify as to what was said and how it was said.

Mr. Starkey: Your Honor, I object to——

The Court: Wait a minute.

Mr. Carluccio: The reason being twofold: (1404) Colson is available for testimony——

Mr. Starkey: I cannot let this go any further, your Honor. This is gross misrepresentation on the part of the attorney.

The Court: The jury will disregard what counsel on either side will say here as to the availability of Colson. The jury is not informed as to the availability of Colson.

Mr. Carluccio: When we find that he is alive—not that has has passed away—however, that Colson can testify as to what was said, and I make also the analogy with the tape that we had introduced with the rag: it is not a photograph of the tape, so likewise, the best evidence in this instance is the conversation as Colson heard it from Massiah, in addition to which, as your Honor well knows, the reason for this conversation, most probably, was to pump the defendant for admissions, and if they are admissions against my client's interest, it has always been a rule of law that admissions may be explained, the full circumstances around the admissions and how the statements were made.

In this respect I can't cross-examine an inanimate tape recording, because all Mr. Murphy will be

stating in his examination by Mr. Starkey will be the (1405) inanimate words of what he heard on this machine, this tape recording.

If Colson is here to testify, we can find out not only what was said, your Honor, but how it was said, the demeanor of the parties, where it was said in a jocular fashion, whether it was said in a serious fashion, and the like. And I feel that if counsel wishes to bring out admissions, they should be brought by the best evidence, Mr. Colson, who was there, not a hearer of an inanimate recording, so that our right of cross-examination is not curtailed.

The Court: That is overruled. The Court is going to admit the language as far as possible as to what Massiah said, not what Colson said. In other words, I don't want you to give what Colson said at all. I just want you to give what you heard, as the words came from Massiah's mouth.

The jury is also instructed that this evidence is binding only on the defendant Massiah. This evidence is not to be construed in any way with reference to the guilt or innocence of the other defendants on trial. This is evidence only as to the defendant Massiah.

All right. You may proceed.

Mr. Starkey: In regard to the application (1406) of the defense just now, I would merely like to state for the record that I have submitted to the Court and defense counsel the government's memorandum of law citing On Lee, in which the Supreme Court ruled on this precise question.

The Court: All right.

By Mr. Starkey:

Q. What was said by Massiah during the course of this conversation? A. Massiah stated——

The Court: Wait just a minute, please.

Delete from what Massiah said anything about anybody else participating except Massiah. Do you follow me?

The Witness: Yes.

The Court: In other words, don't give us anything about anybody but Massiah, since this is only binding on Massiah. Omit from your testimony anything with respect to any other person, including the defendants in this case.

Mr. Pogoda: If the Court please, if there is a typewritten transcript of the conversation, I think the defense should have the opportunity to examine it.

The Court: Yes.

(1407)

Q. Now, will you proceed, Agent Murphy. A. The defendant Massiah stated that during this time he had made a million mistakes and that instead of fighting each other, they should be fighting hard to win this case. He stated that while in Valparaiso, Chile, at the home of Rene Huasaff, he sat down and wrote a letter to New York stating the exact amount of cocaine he was bringing in, the exact amount that Rene Huasaff expected of him. He said this letter was written in the presence of Rene and his wife. He stated that he had the cocaine in his room in a suitcase for approximately 22 days, and that two

days out of New York he noticed the cocaine was evaporating. He got the roll of tape and attempted to make it airtight so that there would be no further evaporation. And he stated that it was this tape that got him in all this trouble.

Q. Do you recall any further conversation? A. Yes. He stated that on arrival he met a longshoreman and that he motioned him through the passageway to show him where the cocaine was sitting, and that while walking through the passage way he saw two big men following him. He states that, "Jesus Christ, they must have been bulls"—the exact words. To that he said, "I told the longshoreman to come back later, it was too hot."

(1408)

He stated that he intended to give the longshoremen all the cocaine at that time.

Q. Do you recall anything about the informer? A. He stated that the informer—it's a bit difficult to get this across. He stated that he knew who the informer was in this case, and that he thought that besides the informer there were other people involved. He stated that, "If they knew so much about my meeting Rene in his truck in Valparaiso," that the Feds must have been watching him a lot longer than what they had anticipated.

Q. Can you recall the exact words about the informer? Were any names mentioned? A. Yes. The informer was named as Frank Torres.

Q. Was anything else said? What was said, Agent Murphy? Were any other possibilities discussed? A. Yes. The defendant Massiah stated that he was not stealing from the packages as they were coming in in the past, and he could not see how anybody could accuse him of

stealing from any of the packages, because it was not in his makeup to steal, and if he did, he would be afraid of revenge on the part of his fellow-conspirators.

Mr. Carluccio: Objection, your Honor, (1409) especially as to the last part.

Mr. Starkey: The government consents to strike out "conspirators".

Mr. Carluccio: "fellow-conspirators"—that whole phrase.

The Court: The motion of counsel to strike is granted, and the jury is instructed to disregard that part of the testimony.

Q. Was May, the chemist, mentioned? A. Yes. The defendant Massiah stated that besides Frank Torres, he had just remembered that the biggest informer of all—the exact words—the biggest stool pigeon of all was a woman he identified as May, a federal stool pigeon, and it could have been May, because he had some dealings with May. And besides the information they probably got together, the Torres information, "and that's how I was fingered."

Q. And you said a chemist was mentioned? A. Yes. Massiah stated that at one time, while in Valparaiso, he remembered Rene introducing him to a chemist by the name—he didn't mention his name—he said a chemist with a gimpy leg, and he thought perhaps it was also the chemist who could have put the finger on him besides Torres.

(1410)

Q. Did he say why he thought this? A. Yes. He stated that during the transaction this man stood right there, and he was present while the transaction was going on in the

past. And he had personal knowledge of just what was transpiring.

Q. Was anything said about a misapprehension by Colson? A. Yes. Massiah stated that Rene questioned him as to who was going to get the load.

Massiah stated that Colson was to get the load, that he was going to handle all the distribution of it.

Then Colson—Massiah stated that, "I told Rene it was all for you and that I have no intention of stealing anything."

Q. Did there come a time when you saw Colson and the defendant Anfield together? A. Yes; there did.

Q. And when was that? A. This was on December 5, 1959, approximately 9.30, 9.45, in the southeast corner of Lenox Avenue at 118th Street.

Q. Did you see whether or not they conversed? A. Yes.

Q. Where did the conversation take place? (1411) A. The conversation took place in a 1958 Chrysler Imperial driven by Jesse Colson. The defendant entered into the car and entered into a conversation with Colson.

Q. And where did this take place? A. The southeast corner of Lenox and 118th Street, on Lenox Avenue.

Q. Were you able to overhear this conversation? A. Yes; I did.

Q. Will you state what was said by the defendant Anfield?

Mr. Pogoda: If the Court please, this witness has not yet identified the voice of the defendant Anfield.

Mr. Starkey: I am sorry, your Honor. I ask the Court's leave to proceed.

The Court: Yes.

*Finbarr J. Murphy—for Government—Direct*

Q. Did there come a time thereafter when you had a conversation directly with Anfield?

Mr. Pogoda: I will not object to any conversations after. We are now identifying the voice at the time of this conversation.

The Court: Did you see the defendant Anfield enter Colson's car?

The Witness: I did.

(1412)

The Court: Did you know him at that time?

The Witness: I had a picture of him at that time.

The Court: I see. And you recognized him from his picture as he entered the car?

The Witness: I did.

The Court: And you knew he was Anfield when he entered the car?

The Witness: I did.

The Court: You had not had any previous occasion to talk with the defendant?

The Witness: Myself?

The Court: Yes.

The Witness: No. Not at that time.

The Court: Did you see anyone else in the car?

The Witness: Yes. Jesse Colson was in the car.

The Court: There was no one in the car other than these two?

The Witness: Just the two occupants, Colson, and the defendant Anfield.

The Court: And at this time were you familiar with Colson's voice?

The Witness: I was.

(1413)

The Court: And your statement as to the voice of Anfield comes from what? In other words, how did you distinguish Colson's voice from Anfield's voice?

The Witness: Well, there was two people in the car. I knew Colson's voice. Subsequent to the recording, I spoke with the defendant Anfield in my office, prior to his arrest, and I had conversations the day I arrested him, with him.

The Court: Are you saying that on the day in question you were familiar with Colson's voice, and since Anfield was the only other person in the car, when you were not hearing Colson's voice, then the other voice had to be Anfield's? Is that about how you get the deduction?

The Witness: That is how I arrived at that conclusion.

By Mr. Starkey:

Q. Agent Murphy, you did talk with Anfield after this conversation in the car also? A. Yes. After the conversation, yes.

Q. And at that time did you recognize his voice as the one in the car? A. Definitely, yes.

(1414)

Mr. Starkey: I think it can be done both ways, your Honor.

Mr. Pogoda: I think I should be permitted an opportunity to question this witness before he is asked any questions about the conversation.

The Court: All right, sir. You may.

Mr. Starkey: Your Honor, if I may be heard, I will object to the interruption here. I think we have laid a proper foundation, and I would like the Court's leave to proceed with my examination. I think that anything counsel has to say now is more appropriately done on cross than on voir dire.

The Court: The question was the admissibility here, and I will let counsel proceed.

By Mr. Pogoda:

Q. Now, Agent Murphy, was the Colson car parked on Lenox Avenue, or was it parked on 118th Street?

Mr. Starkey: Your Honor, I object right here and now. I submit that this very first question indicates that his questions are more appropriately directed to cross rather than voir dire.

Mr. Pogoda: I am entitled to see if he was in a position to see who was in the car, and that is what the question is intended to lead to.

Mr. Starkey: I submit that the foundation has (1415) been laid and that this examination is more properly done on cross.

The Court: That is overruled. Proceed. Let us not have an extended examination about this.

A. Do you wish to know where the car was parked?

Q. The Colson car. A. On the southeast corner on Lenox at the corner of 118th Street.

Q. Where were you at the time? A. I was in a car parked on the northeast corner, double-parked right at the intersection.

Q. Your car was up ahead of the Colson car, isn't that correct? A. That's correct.

Q. So you didn't see what was happening in front of you, did you, Agent Murphy? A. Did I see what was happening in front of me?

Q. You were facing north, weren't you? A. I was looking back.

Q. Was your car on the corner? A. No. It was double-parked against the car on the corner.

Q. And was the Colson car double-parked also? A. No. Colson had a spot right on the corner.

(1416)

Q. Did you make a note anywhere of the time it happened? A. I made a note on the transcript there—I believe it was the following morning I transcribed that tape—as to just where the meet was made.

Q. Now, Agent Murphy, when for the first time did you speak to the defendant Anfield? A. It was between December 15 and the date of his arrest, December 16th, I believe. I spoke to him in the union hall. I spoke to him in my office.

Q. So it was a matter of ten days to two weeks after you listened to this transmission of voices that you first spoke to him? A. I believe it was more. It was three or four days after the conversation was overheard.

Q. This conversation you said was on December 5, is that right? A. That's correct.

Q. And didn't you say that it was December 16th that you first spoke to him? A. No, no. I spoke to the defendant Anfield in the union hall prior to his arrest and after the tape was made and in my office. I would say approximately three or four days after I made this——

(1417)

Q. How long was this first conversation with him? A. The first conversation?

Q. Yes. A. Approximately a half hour.

Mr. Starkey: Your Honor, I will again object on the same grounds previously made. I think this is becoming extended.

The Court: I think he is coming to it now.

By Mr. Pogoda:

Q. Between the time you heard this record or this transmission of voices and the first time you spoke to him, did you speak to anyone else in connection with this case? Any defendants?

Mr. Starkey: At this time I will object and submit that we are getting collateral.

The Court: This is probably his final point, so answer the question.

Q. Did you speak to any of the defendants, other defendants in this case, between the time of this transmission of voices and the conversation in the union hall? A. Yes. I believe I spoke to——

Q. How many? A. Just one.

(1418)

Q. Which one? A. The defendant is not here right now.

Q. The defendant Colson? A. That's right.

Mr. Pogoda: If the Court please, I respectfully press my objection. An improper foundation has

been laid for a conversation between the defendant Anfield and Colson, to which the witness is about to testify.

The Court: That is overruled. The jury is instructed again that this testimony which will be given is binding only on the defendant Anfield. It is not binding on anyone else other than Anfield, since it is his own statement.

Further than that, the witness is instructed to give the testimony without reference to any of the other defendants on trial. I am not assuming that there was any reference in these conversations to any other defendants, but in the event that there is, you should eliminate that from your statement.

The Witness: Yes, your Honor.

By Mr. Starkey:

Q. Will you state what was said by Anfield on this occasion. A. He stated that he had made one run down to (1419) Valparaiso, Chile. It was on the Santa Louisa. And at the time he brought it into the country here, he had it hidden in his mattress. He stated that he was not worried about being arrested, because since the Massiah arrest, approximately two years had transpired, and, "if I were to be arrested I would have been arrested long ago."

He stated that he had received a fair deal from Jesse Colson, that after every sale was made the money was split down the middle on the table, and if there was any cocaine left it would be split, too.

Q. Was anything said about when this run took place? A. This, yes. This run that the defendant Anfield made was after the stickup of the defendant Massiah. He stated that, "After the stickup I made the run. Then you made

two or three more, Jesse, and then we got defendant Massiah back in, and it was at this time that all the trouble started, when you brought that boy Paul King into this deal." And his story about coming back with eight ounces being thrown overboard.

Colson stated, well, that was just——

The Court: Just a minute. Don't give us what Colson stated, just what Anfield said.

The Witness: I am sorry.

(1420)

A. (Continuing) Anfield stated that, "You talk about all the larceny between us. What about that eight ounces? And we had invested $6,000."

He stated that during this participation with Colson he had kept records. He stated that the biggest narcotics man and the smallest narcotics men keep records, and if in the event they are investigated by the police, it doesn't necessarily have to mean that the records on hand mean anything about a narcotics transaction. It could be loans. There is no way they can pinpoint this keeping records.

He stated that, "When you were down sailing, everything was running smoothly. I was doing cash business. If you wanted money, six hundred dollars, a thousand dollars, it was always there. I was out in the streets, and everything was running smoothly."

Q. Was anything said about when the trouble really started? A. Yes. As I stated before, the trouble really started when this fellow Paul King came into the picture. Jesse stated——

The Court: Just a minute, please. Just give us what Anfield stated, please.

A. (Continuing) Well, Anfield stated the trouble really started when this fellow Paul King came into the (1421) picture.

Q. Was anything said about Massiah?

The Court: Wait just a minute, please. The witness has been instructed not to mention and to delete from any testimony any reference to any of the defendants in this case on trial. I am not assuming that there is any reference, but the ruling of the Court is that the witness is not to indicate in any way any such connection, if there is one.

Mr. Starkey: I am sorry, your Honor. I did not understand that that was the Court's ruling.

The Court: All right.

Q. Was there anything said about theft? A. Yes. The defendant Anfield stated that he was aware that someone was stealing from the packages, but he said, "What the hell, Jesse, you're getting yours, and I'm getting mine, and the theft didn't amount to that much anyhow."

Q. Did there come a time thereafter when you had a conversation directly with Anfield? A. Yes. On the date of the arrest in this building, just prior to his arraignment, I was speaking with another agent in the corridor, and the defendant Anfield called me over and said——

(1422)

The Court: Just a minute, please.

Again, the jury is instructed that what the defendant Anfield is alleged to have told the agent at this time is not evidence against anyone except the defendant Anfield, and it should not in any way be

understood to be evidence against any other defendant. It is applicable only to Anfield.

In giving this, delete from any statement that Anfield made any reference to any other defendant on trial, if there was such—and I don't want the jury to assume that there was such. We want to be very careful about this.

A. This was just a conversation I had with the defendant Anfield. No other defendants were mentioned.

As I stated before, he told me he wanted a drink of water, and, as I approached him, he started to walk outside, and he said, "Wait a minute, Murphy."

I said, "What is it?"

He says, "Well, I would like to come clean."

So I said, "Well, tell me."

He said, "Well, I did bring in cocaine on the Santa Luisa."

I asked him where he kept it. He said he kept it in his locker. I asked him, "Well, how much was it?"

(1423)

He said, "Approximately eight ounces."

I stated, "Well, are you willing to make a statement to that effect after the arraignment?"

He said, "Yes. I want to cooperate fully."

And that was about the sum and the substance of the conversation.

Q. Did there come a time after that when you again saw Massiah? A. I don't understand that question.

Q. Winston Massiah. A. Yes.

Q. Did you again see him? A. After what conversation?

Q. After December of '59, the conversation with Anfield that you just described. Did you see him in my office? A. Yes. During the month of November, 1960, the defendant Massiah, accompanied by his counsel, came into the office of United States Attorney Starkey, at which time a statement was taken—not a statement—Mr. Starkey took notes as to this matter,

Mr. Carluccio: At this point I wish to object on the ground that the conversation had at that time was strictly agreed to be without prejudice, and any further testimony along this line should be therefore curtailed.

(1424)

Mr. Starkey: Your Honor, I am not sure I understand counsel's objection. May we approach the bench?

The Court: No. I overrule the objection, anyway.

Mr. Starkey: Your Honor, may I request a brief recess at this time? I would like to talk with Mr. Carluccio about the objection.

The Court: All right. We will take a five-minute recess.

(Short recess.)

(The following occurred in the absence of the jury:)

Mr. Starkey: Your Honor, I am not going to proceed with the evidence I was just about to adduce, because Mr. Carluccio tells me that I told him at that time that I would not use the evidence until the defendant Massiah told me he had definitely made up his mind to cooperate and that

there would be no question of its use until there was a definite understanding.

However, at this time, your Honor, I would like to make application to the Court to permit Agent Murphy to testify about references to other defendants in the conversations concerning which he has already testified, (1425) and I make the application for this reason: that concededly these admissions made by Anfield and Massiah in conversations with Colson are only admissible insofar as the question of their own guilt is concerned. However, the charge here as to each of them is conspiracy, specifically designating other individuals as set forth in the indictment, and admissions on their part that show an acquaintance and actual cooperation with specifically-named other defendants named in the conspiracy count of the indictment are very, very probative insofar as proving their guilt is concerned, showing their conspiracy with others and showing conspiracy with other persons, with whom they are specifically charged with conspiring.

Now, I agree that there is some danger of prejudice overlapping onto defendants from these admissions, but I refer the Court to United States v. della Paoli, where this precise issue again was considered by the Supreme Court, where a confession was admitted in evidence and where, as here, it was impossible for the evidence to be delivered in a coherent, intelligible, understandable form with excision of references to accomplices.

The Supreme Court did uphold the admission of (1426) such a confession, in that case a written

confession, indicating accomplices in the della Paoli case, and I submit that this situation is very, very comparable to that, and I would make application at this time for the Court to permit Agent Murphy to so testify.

The Court: It is the Court's view that the testimony does have probative value, but you must weigh the probative value of the testimony against prejudice which would result as to the other defendants.

The fact that it has some probative value as to one defendant does not necessarily mean it should be admitted where the admission might be very prejudicial to others involved in the trial of the case. The government sought to bring these cases on trial together, these defendants on trial together, and consequently the government risked the possibility of some of their evidence which would have been admissible if the defendant had been on trial alone not being admitted because there were other defendants against whom the admission of such evidence would have been prejudicial.

It is my view that the witness has been able to testify coherently with reference to the statements made in connection with these transmissions from the automobile, Colson's automobile, with the excision of any reference to any other defendants, and I think it would be dangerous, (1427) perhaps, to allow this evidence, which is admittedly not available to the government, as against the defendants who have not made the statements—it would be prejudicial for that evidence to come into the record, and I think this Court should make

certain that it does not come in under these circumstances.

Mr. Starkey: All right, your Honor. I will naturally defer and abide by the Court's ruling. I merely wanted to make the application so that the government's position is absolutely clear.

The Court: All right. Is that all now?

Mr. Starkey: Yes, sir.

The Court: All right. Call in the jury.

(The following occurred in the presence of the jury:)

Direct examination continued by Mr. Starkey:

Q. Now, Agent Murphy, do you know Leon Ellis? A. Leon Ellis?

Q. Schoolboy. A. Yes, sir.

Q. Was it you who placed him under arrest on March 26, 1961? In April? A. Actually, he was placed under arrest by a Customs enforcement officer. I was nearby.

(1428)

Q. And were you in the courtroom when Schoolboy testified? A. I was.

Q. Do you recall questions being addressed to him as to whether or not he was told he was indicted in this case or not? A. I remember.

Q. Did you ever have such a conversation with him?

Mr. Somers: I will object to that. I think that Mr. Starkey is apparently going to impeach the testimony of his prior witness.

Mr. Starkey: Not at all, your Honor. Schoolboy testified that he could not remember.

Mr. Somers: Schoolboy here testified at great length to two days——

The Court: That is overruled.

Answer the question.

Q. Did you ever have a conversation with him as to whether or not he was named in this indictment? A. I did.

Q. When? A. Coming down the West Side Highway, after he was placed under arrest.

Q. And that was the end of April? (1429) A. Yes.

Q. What did you say? A. I told him that he wasn't named in the indictment.

Mr. Somers: He was not named?

The Witness: Not a defendant in the indictment.

Mr. Somers: I am sorry.

A. (Continuing) He was not a defendant in this case.

Q. Do you know a man by the name of Leon Aiken? A. I do.

Q. Or Leonard Aiken, I should say. A. I do.

Q. Was it you who placed him under arrest? A. Yes. I executed a warrant on December 13th.

Q. On what? A. Not December. May 13, 1961.

Mr. Starkey: I ask that this document be marked as a government's exhibit for identification.

(Marked Government's Exhibit 33 for identification.)

Q. I show you Government's Exhibit 33 for identification and ask you if that is the warrant which you executed in taking Aiken into custody? (1430) A. Yes; it is.

Mr. Starkey: I offer in evidence Government's Exhibit 33 for identification.

Q. Did there come a time thereafter when you saw the defendant Aiken and myself together? A. Yes, sir.

Q. Where was that? A. It was in your office in this building.

Q. Did you hear any conversation at that time? A. Yes; I did.

Q. Did you hear any conversation as to his identity, or concerning his identity? A. Yes.

Q. What did I say and what did he say? A. First you asked him his name. He gave you Leonard Royall Aiken. You asked him, "Are you known by any other names?" He said, "Yes. I am known as Leon."

Q. Was there any conversation that you recall about Schoolboy? A. Yes. You asked the defendant Aiken if he knew a Schoolboy, to which defendant Aiken stated that he knew a fellow by the name of Schoolboy, he knows him two or three years.

(1431)

(Government's Exhibit 33 for identification received in evidence.)

Q. Were you present at the arraignment of the defendant Aiken? A. Yes.

Q. What happened thereafter? A. After his arraignment?

Q. Yes. A. I brought defendant Aiken down to the U.S. marshal's office, approximately 1.30 or 2 o'clock. There were no marshals available to take him to West Street for safekeeping, so I brought him over, and I pulled up in front of the Federal House of Detention, and

I turned to tell the defendant Aiken to get out, I was going to place him in the house, at which time I noticed the defendant Aiken was sweating profusely and had a nervous twitch on the side of his face.

Mr. Somers: I object to the characterization "nervous twitch", your Honor.

The Court: Suppose you describe what was said, leaving out the word "nervous." Describe how he looked.

A. (Continuing) The left side of his face was moving back and forth and jumping. I told him to get out, and defendant Aiken said, "Wait a minute."

(1432)

And I said, "Why?"
He says, "If you ever get any stuff"——

Mr. Somers: Your Honor, I object to that. This is a conversation in no way relevant to the eighth count of the indictment, which charges this defendant with conspiracy, and unless Mr. Starkey is going to limit this to such conversation or such declaration by the defendant Aiken as may be construed in furtherance of the conspiracy, I submit it is highly improper, highly prejudicial. The conspiracy was terminated back in 1958 in the fall. This is a conversation held in March of 1961.

Mr. Starkey: May.

Mr. Somers: May, 1961, long after the termination of the conspiracy. If this defendant were charged individually with a substantive count, I might recognize the value of that and the admissi-

bility of it, but I submit, your Honor, to allow this conversation into the record is highly prejudicial, in no way in furtherance of the conspiracy and absolutely inadmissible.

Mr. Starkey: The government, of course,——

The Court: I think the government has filed a memorandum covering this particular evidence, and the Court has had an opportunity to study the memorandum (1433) and also the authorities, and it is the Court's view that the evidence is admissible only as to the defendant Aiken, and the jury is instructed that what the witness will testify to now is admissible only as to the defendant Aiken and not as to any other defendants on trial, and is in no way to give rise to any inference whatever as to any other defendants on trial, other, of course, than the defendant Aiken.

Mr. Somers: Your Honor, do you feel that this is under the eighth count of the indictment in furtherance of the conspiracy? On what ground, may I respectfully ask, has your Honor decided that it is admissible?

The Court: Well, sir, I don't want to give it to you in front of the jury, but I am in accord with the cases which the government cited in its memorandum and the principles which are outlined in those cases, not that it is connected with the conspiracy at all.

Mr. Somers: I see. It is not on that ground?

The Court: No. Nor does it refer to the conspiracy, nor does it relate to the conspiracy, but it is on the basis of the cases in the memorandum.

Mr. Somers: Thank you, Judge.

Mr. Carluccio: With all due deference to your Honor's ruling, for the record, I respectfully (1434) object on the ground that even though your Honor has cautiously instructed the jury, I feel that the strong and highly prejudicial sounds of those words will drown out all weaker sounds, and the probative value that might be adduced with reference to the point that Mr. Starkey makes will not blot out the words in the jury's minds, and the jury will not be able to make this very fine distinction, and my client will be therefore prejudiced.

The Court: Let the objection be recorded, and it is overruled.

Proceed.

By Mr. Starkey:

Q. Will you proceed, Agent Murphy, with the conversation you were describing? A. Yes. The defendant Aiken stated to me that, "If you get any stuff you want to get rid of, call me."

And I said, "What?"

He said, "If you get any stuff you want to get rid of, call me. You can trust me."

I said to him, "I can trust you? Do you know who I am?"

He said, "Yes."

I said, "Well, as of last night I never even met you." (1435)

He says, "Don't worry. You can trust me."

I said, "I don't work like that. If I am going to work with you, I've got to know who you are doing business with."

He said, "What do you mean?"

I said, "Well, I have a lot to lose here."

So I told him, "I've got to have references. Give me some people that I can check up." I said, "I got to have references of people that have done business with you before, before I go into anything with you."

And this conversation terminated, and I took him into the Federal House.

Q. Now, Agent Murphy, are you familiar with the vernacular and slang used in the New York area insofar as a reference to narcotics is concerned? A. I am.

Q. Do you know any of the words which are used among narcotic traffickers to designate narcotics? A. I do.

Q. Will you tell the Court and jury what such words are? A. Cocaine is "white stuff." They call it "C". "H" is "horse", heroin. "Reefer" is marihuana, "pot", "M".

Mr. Starkey: No further questions.

(1436)

The Court: Take the witness, please.

Cross examination by Mr. Carluccio:

Q. Mr. Murphy, with reference to the two cloths which were 12 and 13——

Mr. Starkey: I am sorry, your Honor. I did overlook one item. With the Court's leave, I will continue.

The Court: Yes.

Mr. Carluccio: All right.

*Finbarr J. Murphy—for Government—Direct*

Direct examination continued by Mr. Starkey:

Q. Insofar as the conversations between Colson and Anfield and Colson and Massiah in the automobiles were concerned, do you know whether or not there were any other devices present besides the microphone over which you heard the conversation? A. Yes; there was.

Q. And what was it or what were they? A. It was a Minifon tape recorder that I had placed in the glove compartment of Jesse Colson's car, and we taped the conversation.

Mr. Starkey: May these tapes be marked as Government's Exhibits, please.

(Marked Government's Exhibit 34 for identification.)

(Marked Government's Exhibit 35 for identi-
(1437) fication.)

Q. Did you receive those recordings after the conversation in each instance? A. Did I receive them?

Q. Yes. A. Yes.

Q. What did you do with them thereafter? A. After the conversation I had them retaped onto this tape here.

Q. I show you Government's Exhibits 34 and 35 for identification and ask if those are the tapes in question. A. Yes.

Q. You played those tapes back and listened to them? A. Oh, yes.

Q. Can you tell the Court and jury how distinct or how clear the conversations are? A. Well, first of all, you've got to know the voices of the people concerned,

because they are audible to me but maybe to a stranger it might take two or three playings before you actually pick up the actual content of them. But they are not the best.

Q. But they are audible and they can be made out? A. Oh, yes.

Mr. Starkey: I offer in evidence Government's (1438) Exhibits 34 and 35 for identification.

Mr. Carluccio: I object, your Honor. There is a great deal of objectionable material in the tapes by virtue of the fact that you directed Mr. Murphy's testimony only to evidence that was concerned with the particular defendant, and in addition there is not only that, as I can see from two of the records there are privileged matters; there are many other matters in there.

The Court: I sustain the objection. Proceed. It is your witness now. You may cross-examine.

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(1450) • • •

Cross-examination by Mr. Pogoda:

Q. Now, Agent Murphy, when were you originally assigned to this case? A. In April, the end of April.

Q. Did you have occasion to speak to Frank Torres? A. Yes.

Q. And the information you received from him was that there was a shipment of cocaine coming in on the Santa Maria; isn't that so? A. In part, yes.

Q. And based upon that information, you alerted other men in your division? A. Well, no. Other men in my division?

Q. Yes. A. Well, yes. People who would work with me on this case.

Q. Ordinarily you do not go down to search a ship, do you? A. Yes. We are there on a particular case when the information is good and you are assigned a definite investigation, so you go.

Q. This was not the ordinary, routine search by the Customs enforcement officers, was it? (1451) A. No.

Q. This was a more thorough search than usually is made; is not that true? A. Not a more thorough search. We just had information as to where to look, the possible areas.

Q. You boarded the ship when it docked, together with the other officers, am I correct? A. That's correct.

* * * *

(1459) * * *

Q. * * * Who was the second defendant arrested in this case? A. Jesse Colson.

Q. When was he arrested? A. In July of '59, I believe.

(1460)

Q. From whom did you get Jesse Colson's name?

Mr. Starkey: I will object to that, your Honor. This gratuitous inquiry into law enforcement methods I think is improper, and I object to it.

The Court: Did you get this from a confidential informant?

The Witness: No. The man's name has been mentioned here.

The Court: I will overrule the objection.

Q. Frank Torres? A. Yes.

Q. Now, when did you get Colson's name from Frank

Torres? A. Well, maybe it was before the arrival of the Maria on May 5—May 6, rather.

Q. Did you get any other names besides Colson's name from Frank Torres before the arrival of this shipment? A. People involved? No.

Q. No one else but Colson and Massiah? A. Actually of people involved, no. That's correct.

Q. When for the first time did you have a conversation with Jesse Colson? A. The first time I spoke to Colson was the date (1461) of his arrest.

Q. Or that you had known—and that was in July of 1959? A. That's correct.

Q. Although you had known of Colson's name back in April of 1958 and had made an arrest in connection with the information given you by Frank Torres, you first apprehended Jesse Colson in July of 1959?

Mr. Starkey: I will object to summation, your Honor.

The Court: The witness has already testified to this. I sustain the objection.

Q. Did you have Jesse Colson under observation during that period of time? A. Yes; we did.

Q. Did you arrange to interview Jesse Colson after his arrest? A. Yes.

Q. Where? A. I spoke to Colson in the Federal House of Detention.

Q. Was a recording made of that conversation? A. No.

Q. Was there a reporter present or a stenographer present during that period of questioning? (1462) A. No.

Q. Was Colson there held under bail?

*Finbarr J. Murphy—for Government—Cross*

Mr. Starkey: I will object, your Honor.

The Court: What are you going into Colson for?

Mr. Pogoda: I want to show some sort of favored treatment because of the conversations with this——

Mr. Starkey: Colson was neither a witness nor a defendant on the trial of this case, your Honor.

The Court: You want to show some favored treatment to Colson?

Mr. Pogoda: That is right.

The Court: I will overrule the objection. Proceed.

Q. What was Colson's bail at the time of his arraignment, if he was arraigned? A. I think it was $10,000 and reduced to $7,500.

Q. Was his bail originally $150,000? A. Gee, it may have been.

Q. Then it was reduced to $10,000 and then further reduced to $7,500? A. It could have been reduced right to $7,500. I am not too sure.

Q. How many conversations in all did you have with Jesse Colson?

(1463)

Mr. Starkey: Objection.

Q. What is the purpose of this, Mr. Pogoda?

Mr. Pogoda: Because throughout this entire trial, if the Court please, each and every witness who has taken the stand has related conversations they have had with Jesse Colson, and Jesse Colson's

conversations related to these defendants, and it would appear as if Jesse Colson were a witness in this case without taking the witness stand.

The Court: It would appear what, sir?

Mr. Pogoda: That Jesse Colson was a witness in this trial, although he never took the stand. Your Honor permitted conversations Jesse Colson had with Schoolboy and with Paul King and the like.

Mr. Starkey: Your Honor, may I be heard?

The Court: All right, sir.

Mr. Starkey: I think the record shows, your Honor, that any statements made by Jesse Colson which are in the record and have been admitted against the defendants in this case occurred at a time when the conspiracy was on and were in furtherance of the cconspiracy, and now counsel wants to ask Agent Murphy about conversations between him and Colson, which clearly took place after Colson's participation in the (1464) conspiracy—that is to say, after his arrest.

I submit that they are irrelevant and have no place in this cross-examination.

The Court: All right, sir. I will overrule the objection. However, if you are going to get into conversations with Colson, I suggest to you that you may get into evidence something that you might not want in evidence.

Mr. Pogoda: I am not asking for the substance of the conversations. I am merely asking how many conversations there were.

The Court: Overruled.

(To the witness) How many conversations were there, about?

*Finbarr J. Murphy—for Government—Cross*

The Witness: Well, there were quite numerous conversations.

The Court: Ten, twenty, fifty?

The Witness: Twenty or thirty?

By Mr. Pogoda:

Q. Can you tell us, to the best of your recollection, in which conversation the name of the defendant Duke Anfield came up? A. Well, when Jesse Colson decided to cooperate, his name came right up.

(1465)

Q. Well, when was that? How soon before you approached Duke Anfield and had a conversation with him? A. Well, Colson began to cooperate in July, July 27, 1959, I think. And how soon—what? What was the next question?

Q. How soon after that did you have a conversation with Duke Anfield? A. That was after the recording, or in or around that period there before his arrest, December 5, 1959.

Q. So that there was approximately a four-month period between the time you first heard the name of Duke Anfield—was that the first time you heard his name, in July of 1959? A. That's correct.

Q. —until the date of his arrest, some time in December; is that not true? A. I first heard of him in July, and his name kept on cropping up in my conversations with Colson.

* * * *

*Finbarr J. Murphy—for Government—Cross*

(1468) • • •

Q. When for the first time did the name of Leon Ellis come up in the investigation? A. Leon Ellis' name?

Q. Schoolboy. A. Jesse Colson told me his implication in this.

Q. When? A. That was around July or August.

Q. Of 1959, am I right? A. Yes. As Schoolboy. The name came up as Schoolboy.

Q. Well, now, anywhere in your records do you have any information as to who this Schoolboy is? A. Who the Schoolboy is?

Q. Yes, or where he may be found. A. Prior to his arrest?

Q. At the time you spoke to Jesse Colson. A. We had the general area where he hung around.

Q. Did Jesse tell you that he could be found in (1469) Carter's Bar, or he lived at 141st Street, or somewhere in that area? A. Yes. I believe so, yes.

Q. Didn't he describe Schoolboy to you so that you knew who he was? A. He gave me—he may have. He never knew the fellow's name. Only as Schoolboy.

Q. Did you ever take him down to the police, the Rogues' Gallery, to see if you could identify his picture? A. I don't know whether you have been there, but that is a tedious job. All we had was Schoolboy. And naturally, I checked out the alias. That's all I had. And the alias file never contained no Schoolboy.

Q. Did Jesse Colson tell you that Schoolboy's first name was Leon? A. No. He never did.

Q. When for the first time did you find out his name was Leon? A. When I arrested him and his fingerprints came back.

Q. Until then you say now that you didn't know Schoolboy was Leon Ellis? A. That's correct.

Q. Let me ask you this, Agent Murphy: you were (1470) interested in apprehending Schoolboy Ellis, were you not? A. Yes.

Q. And Colson was cooperating with you in July or August of 1959; is not that true? A. That's correct.

Q. Now tell us, as a law enforcement officer, what you did from July or August, 1959 until Schoolboy was apprehended in 1961, to locate him. What you did to try and apprehend him. A. My particular job—my main interest in this investigation was to obtain evidence against Massiah and the seamen and the longshoremen, if possible. As a Customs agent, that is what I am primarily interested in, to stop the smuggling across the borders. To do that itself takes a lot of work. • • •

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(1472) • • •

Now, Agent Murphy, when for the first time did the name of the defendant Leon Aiken come to your attention? A. That came to my attention maybe May 9—the name of Leon Aiken, Leonard Aiken?

(1473)

Q. 1961? A. Yes.

Q. Had his name been mentioned at any time prior to May 9, 1961? A. His proper name?

Q. The name Leon? A. Oh, yes.

Q. By whom? A. By Jesse Colson. The name Leon, right.

Q. When did his name come up? When was that conversation? A. July '59.

*Finbarr J. Murphy—for Government—Cross*

Q. You were not interested at that time in the sale of narcotics. You were merely interested in the smuggling, the importation of narcotics; is not that true? A. The sale of narcotics always interests me, but we have a jurisdictional agreement between Bureau of Narcotics and ourselves. We will handle the smuggling across the borders. They will handle inside the cities.

Q. Didn't you tell me, in response to the question about Leon Ellis, that your concern and your investigation in this case only concerned itself with (1474) the smuggling and nothing else?

Mr. Starkey: Objection, your Honor. He said, "primarily interested in the smuggling." I will object to counsel paraphrasing the testimony.

The Court: I think he said "primarily." I assume you will accept that.

Q. Did you get a description of Leon, the John Doe in the indictment, from the defendant Colson? A. Yes.

Q. That was in 1959? A. 1959, right.

Q. Now, tell the Court and jury what you did in apprehending Leon between July, 1959 and May 9, in 1961. A. Well, I made inquiries of seamen. I made inquiries of informants I have. My work took me up to the Harlem squads, the precinct squads. I made inquiry there. I was only supplied with a name, had no picture, had no last name.

Q. Jesse Colson was cooperating with you, wasn't he, in July or August of 1959? A. Yes; he was.

Q. Did you ever take Jesse Colson to the area in which he said he was doing business with Leon Aiken? A. No.

I told Jesse to keep an eye out for Leon. (1475) I had no tangible evidence as to who he was. And if he did turn him up, to let me know.

Q. You did set up the defendants Massiah and Anfield for a meeting between the two, between Colson and him; is that not true? A. With the cooperation of Jesse, yes.

Q. That is right. Did you ask Jesse to cooperate with you to locate the defendant Leon, that you were looking for? A. Oh, yes.

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(1481) • • •

Q. (Continuing) At the time of your conversations with Colson and Torres, all you had was their word, am I right? A. As to the implication of any of these defendants?

Q. Yes. A. Well, among other things, besides the conversation, I had the roll of tape, which I figured was evidence, piece of cloth, names of Rene, telephone number, Chile, toll slips, calls made by Colson, which matched up with the telephone number. I had all those little (1482) pieces of information.

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(1521) • • •

Q. Were you looking for Leon Ellis? A. Yes; I was.

Q. Were you looking for Leon Ellis because he fit the description that Jesse Colson had given you about this male Negro of medium complexion, forty years old, five feet nine 165 pounds? A. No. I knew Schoolboy was not Leon.

Q. You knew that? A. Yes. Positively.

*Finbarr J. Murphy—for Government—Cross*

(1522)

Q. Jesse spoke to you specifically and said, "There is a Leon Ellis and there is a Leon whose last name I don't know"? A. No. I asked him. Schoolboy is Schoolboy and Leon is Leon.

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(1554) • • •

Cross-examination by Mr. Archer:

Q. Mr. Murphy, when for the first time did the name Icky Thorn come to your attention and knowledge? A. Icky Thorn—around August of 1959.

Q. In what connection? A. In what connection?

Q. Yes. A. Jesse Colson told me that he was one of the bigger buyers of the cocaine that he and Massiah smuggled in.

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